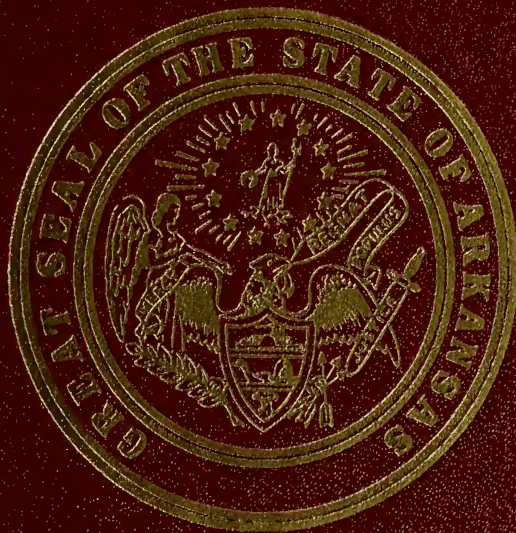


**ARKANSAS CODE
OF 1987
ANNOTATED**

OFFICIAL EDITION



CONSTITUTIONS



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ARKANSAS CODE OF 1987 ANNOTATED



CONSTITUTIONS 2004 Replacement

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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Preface

This volume of the Arkansas Code of 1987 Annotated contains the Arkansas Constitution of 1874, appropriately annotated and indexed, and the United States Constitution, which also is indexed. In addition, it contains the Declaration of Independence, previous state constitutions, and several federal acts, treaties, and compacts of statewide interest.

Suggestions, comments, or questions about this or any other volume of the Code are welcome. You may call our toll-free number, 1-800-833-9844, fax us at 1-800-643-1280, or write: Arkansas Code Editor, Second Floor, LexisNexis, P.O. Box 7587, Charlottesville, Virginia, 22906-7587.

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Sources

This volume contains constitutional provisions approved and in existence as of May, 2004. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2003 Ark. LEXIS 690 (December 18, 2003) and 2003 Ark. App. LEXIS 575 (July 25, 2003).

Federal Supplement through July 25, 2003.

Federal Reporter 3d Series through July 25, 2003.

United States Supreme Court Reports, through July 25, 2003.

Bankruptcy Reporter through July 25, 2003.

Arkansas Law Notes through the 2001 Edition.

Arkansas Law Review through Volume 56, p. 497.

University of Arkansas at Little Rock Law Journal through Volume 25, p. 1010.

User's Guide

Differences in subsection order, punctuation, and other variations in the text from supplement pamphlets and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Some of the section headings in this volume may not be original to the Constitutions, the Amendments or the initiated acts, and were included by the publisher for explanatory and discriptive purposes.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

DECLARATION OF INDEPENDENCE

IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. —Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Georgia:

Button Gwinnett
Lyman Hall
George Walton

North Carolina:

William Hooper
Joseph Hewes
John Penn

South Carolina:

Edward Rutledge
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton

Massachusetts:

John Hancock

Maryland:

Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton

Virginia:

George Wythe
Richard Henry Lee
Thomas Jefferson
Benjamin Harrison
Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton

Pennsylvania:

Robert Morris
Benjamin Rush
Benjamin Franklin
John Morton
George Clymer
James Smith
George Taylor
James Wilson
George Ross

Delaware:

Caesar Rodney
George Read
Thomas McKean

New York:

William Floyd
Philip Livingston
Francis Lewis
Lewis Morris

New Jersey:

Richard Stockton
John Witherspoon
Francis Hopkinson
John Hart
Abraham Clark

New Hampshire:

Josiah Bartlett
William Whipple

Massachusetts:

Samuel Adams
John Adams
Robert Treat Paine
Elbridge Gerry

Rhode Island:

Stephen Hopkins
William Ellery

Connecticut:

Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott.

New Hampshire:

Matthew Thornton

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE.

1. LEGISLATIVE DEPARTMENT.
2. EXECUTIVE DEPARTMENT.
3. JUDICIAL DEPARTMENT.
4. STATE AND TERRITORIAL RELATIONS.

Publisher's Notes. In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the state legislatures to proceed in the matter. In January, 1786, the legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other states of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time; and the city of Annapolis as the place for the meeting, but only four other states were represented, viz.: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton of New York) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the states by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into

ARTICLE.

5. AMENDMENT.
6. MISCELLANEOUS PROVISIONS.
7. ADOPTION.

consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the legislatures of every state, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the legislatures of those states which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven states having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed Constitution was commenced. On the 17th of September, 1787, the Constitution, as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed federal government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolution and letter concerning the same, to "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operation of government under the new Constitution, it had been ratified by the conventions chosen in each state to con-

sider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th day of January, 1790, that North Carolina had ratified the Constitution No-

vember 21, 1789; and he informed Congress on the first of June, 1790, that Rhode Island had ratified the Constitution May 29, 1790. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

Section headings and bracketed clause numbers have been supplied by the publisher.

PREAMBLE

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE 1

LEGISLATIVE DEPARTMENT

SECTION.

1. Legislative powers vested in Congress.
2. House of Representatives.
3. Senate.
4. Election of members — Sessions.
5. Organization — Proceedings — Adjournment.

SECTION.

6. Compensation — Privileges — Holding other office.
7. Bills and resolution — Veto.
8. Powers of Congress.
9. Powers denied Congress.
10. Powers denied the states.

§ 1. Legislative powers vested in Congress.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 2. House of Representatives.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to

their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

§ 3. Senate.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

§ 4. Election of members — Sessions.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

§ 5. Organization — Proceedings — Adjournment.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

§ 6. Compensation — Privileges — Holding other office.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person

holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

§ 7. Bills and resolution — Veto.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

§ 8. Powers of Congress.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; —And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

§ 9. Powers denied Congress.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall

Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

§ 10. Powers denied the states.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE 2

EXECUTIVE DEPARTMENT

SECTION.

1. The President.
2. Commander-in-chief — Pardons — Treaties — Appointment of officers.

SECTION.

3. Miscellaneous powers and duties.
4. Impeachment.

§ 1. The President.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office

of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senatè shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and

will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

§ 2. Commander-in-chief — Pardons — Treaties — Appointment of officers.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

§ 3. Miscellaneous powers and duties.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

§ 4. Impeachment.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE 3**JUDICIAL DEPARTMENT**

SECTION.

1. Judicial power.
2. Extent of judicial power — Supreme Court — Trial and places of trial.

SECTION.

3. Treason, proof and punishment.

§ 1. Judicial power.

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

§ 2. Extent of judicial power — Supreme Court — Trial and places of trial.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

§ 3. Treason, proof and punishment.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE 4

STATE AND TERRITORIAL RELATIONS

SECTION.

1. Full faith and credit to records and judicial proceedings of States.
2. Privileges and immunities — Fugitives from justice and service.
3. Admission of states — Rules and reg-

SECTION.

- ulations respecting the territory and property of the United States.
4. Guaranty of republican form of government and against invasion.

§ 1. Full faith and credit to records and judicial proceedings of States.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

§ 2. Privileges and immunities — Fugitives from justice and service.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

§ 3. Admission of states — Rules and regulations respecting the territory and property of the United States.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

§ 4. Guaranty of republican form of government and against invasion.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

ARTICLE 5**AMENDMENT****Mode of amendment.**

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE 6**MISCELLANEOUS PROVISIONS****Assumption of public debt — Supreme law — Oath of office — Religious tests prohibited.**

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE 7**ADOPTION****Ratification — Attestation.**

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The Word, "the," being interlined between the seventh and eighth Lines of the first Page, the Word "Thirty" being partly written on an Erasure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Attest William Jackson Secretary

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

G°. Washington

Presidt and deputy from Virginia.

Delaware

Geo: Read

Gunning Bedford jun

John Dickinson

Richard Bassett

Jaco: Broom

Maryland

James McHenry

Dan of St Thos. Jenifer

Danl. Carroll

Virginia

John Blair

James Madison Jr.

North Carolina

Wm. Blount

Richd. Dobbs Spaight

Hu Williamson

South Carolina

J. Rutledge

Charles Cotesworth Pinckney

Charles Pinckney

Pierce Butler

Georgia

William Few

Abr Baldwin

New Hampshire

John Langdon

Nicholas Gilman

Massachusetts

Nathaniel Gorham

Rufus King

Connecticut

Wm. Saml. Johnson

Roger Sherman

New York

Alexander Hamilton

New Jersey

Wil: Livingston

David Brearley

Wm. Paterson

Jona: Dayton

Pennsylvania

B Franklin

Thomas Mifflin

Robt. Morris

Geo. Clymer

Thos. FitzSimons

Jared Ingersoll

James Wilson

Gouv Morris

AMENDMENTS

AMENDMENT.

1. RELIGIOUS AND POLITICAL FREEDOM.
2. RIGHT TO BEAR ARMS.
3. QUARTERING SOLDIERS.
4. UNREASONABLE SEARCHES AND SEIZURES.
5. CRIMINAL ACTIONS — PROVISIONS CONCERNING — DUE PROCESS OF LAW AND JUST COMPENSATION CLAUSES.
6. RIGHTS OF THE ACCUSED.
7. TRIAL BY JURY IN CIVIL CASES.
8. BAIL — PUNISHMENT.
9. RIGHTS RETAINED BY PEOPLE.
10. RIGHTS RESERVED TO STATES OR PEOPLE.
11. SUITS AGAINST STATES — RESTRICTION OF JUDICIAL POWER.
12. ELECTION OF PRESIDENT AND VICE-PRESIDENT.
13. SLAVERY PROHIBITED, § 1.
POWER TO ENFORCE ARTICLE, § 2.
14. CITIZENSHIP — DUE PROCESS OF LAW — EQUAL PROTECTION, § 1.
REPRESENTATIVES — POWER TO REDUCE APPORTIONMENT, § 2.
DISQUALIFICATION TO HOLD OFFICE, § 3.
PUBLIC DEBT NOT TO BE QUESTIONED — DEBTS OF THE CONFEDERACY AND CLAIMS NOT TO BE PAID, § 4.
POWER TO ENFORCE AMENDMENT, § 5.
15. RIGHT OF CITIZENS TO VOTE — RACE OR COLOR NOT TO DISQUALIFY, § 1.
POWER TO ENFORCE AMENDMENT, § 2.
16. INCOME TAX.
17. ELECTION OF SENATORS.
18. PROHIBITION AGAINST INTOXICATING LIQUORS, § 1.
POWER TO ENFORCE AMENDMENT, § 2.
TIME LIMIT FOR RATIFICATION, § 3.
19. WOMAN SUFFRAGE.
20. EXECUTIVE AND LEGISLATIVE DEPART-

AMENDMENT.

- MENTS — TERMS OF ELECTIVE OFFICERS, § 1.
- ANNUAL MEETING OF CONGRESS — DATE, § 2.
- SUCCESSION TO OFFICE OF PRESIDENT OR VICE-PRESIDENT, § 3.
- DEATH OF PRESIDENT OR VICE-PRESIDENT — SELECTION OF SUCCESSOR — CHOICE DEVOLVING ON EITHER HOUSE, § 4.
- EFFECTIVE DATE OF AMENDMENT, § 5.
- TIME LIMIT FOR RATIFICATION, § 6.
21. REPEAL OF EIGHTEENTH AMENDMENT, § 1.
INTOXICATING LIQUORS, SHIPMENT INTO DRY TERRITORY PROHIBITED, § 2.
RATIFICATION, TIME LIMIT, § 3.
22. RESTRICTIONS OF TERMS OF PRESIDENT, § 1.
RATIFICATION, TIME LIMIT, § 2.
23. PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS FOR DISTRICT OF COLUMBIA, § 1.
ENFORCEMENT OF ARTICLE, § 2.
24. RIGHT TO VOTE NOT DENIED FOR FAILURE TO PAY POLL TAX, § 1.
ENFORCEMENT OF ARTICLE, § 2.
25. FILLING VACANCY IN OFFICE OF PRESIDENT, § 1.
FILLING VACANCY IN OFFICE OF VICE PRESIDENT, § 2.
DECLARATION OF DISABILITY BY PRESIDENT — ACTING PRESIDENT, § 3.
DETERMINATION OF DISABILITY OF PRESIDENT, § 4.
26. RIGHT TO VOTE NOT DENIED TO CITIZENS EIGHTEEN YEARS OR OLDER, § 1.
ENFORCEMENT OF ARTICLE, § 2.
27. COMPENSATION OF SENATORS AND REPRESENTATIVES.

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION
OF THE UNITED STATES OF AMERICA, PROPOSED BY
CONGRESS, AND RATIFIED BY THE LEGISLATURES
OF THE SEVERAL STATES PURSUANT TO THE
FIFTH ARTICLE OF THE ORIGINAL
CONSTITUTION

Publisher's Notes. Headings have been supplied by the publisher.

AMENDMENT 1

Religious And Political Freedom

Publisher's Notes. The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several states by the first congress on the 25th of September, 1789. They were ratified by the following states, and the notifications of ratification by the governors thereof were successively communicated by the President to congress: Delaware, January 28, 1790; Maryland, December 19, 1789; New Hampshire, Jan-

uary 25, 1790; New Jersey, November 20, 1789; New York, March 27, 1790; North Carolina, December 22, 1789; Pennsylvania, March 10, 1790; Rhode Island, June 15, 1790; South Carolina, January 19, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791. The following of the thirteen original states did not ratify until the year 1839: Connecticut, April 19; Georgia, March 18; and Massachusetts, March 2.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 2

Right To Bear Arms

Publisher's Notes. As to ratification, see Publisher's Notes to U.S. Const. Amend. 1.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT 3

Quartering Soldiers

Publisher's Notes. As to ratification, see Publisher's Notes to U.S. Const. Amend. 1.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4

Unreasonable Searches And Seizures

Publisher's Notes. As to ratification, see Publisher's Notes to U.S. Const. Amend. 1.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

Criminal Actions — Provisions Concerning — Due Process Of Law And Just Compensation Clauses

Publisher's Notes. As to ratification, see Publisher's Notes to U.S. Const. Amend. 1.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights Of The Accused

Publisher's Notes. As to ratification, see Publisher's Notes to U.S. Const. Amend. 1.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 7

Trial By Jury In Civil Cases

Publisher's Notes. As to ratification, see Publisher's Notes to U.S. Const. Amend. 1.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 8

Bail — Punishment

Publisher's Notes. As to ratification,
see Publisher's Notes to U.S. Const.
Amend. 1.

Excessive bail shall not be required, nor excessive fines imposed, nor
cruel and unusual punishments inflicted.

AMENDMENT 9

Rights Retained By People

Publisher's Notes. As to ratification,
see Publisher's Notes to U.S. Const.
Amend. 1.

The enumeration in the Constitution, of certain rights, shall not be
construed to deny or disparage others retained by the people.

AMENDMENT 10

Rights Reserved To States Or People

Publisher's Notes. As to ratification,
see Publisher's Notes to U.S. Const.
Amend. 1.

The powers not delegated to the United States by the Constitution,
nor prohibited by it to the States, are reserved to the States respec-
tively, or to the people.

AMENDMENT 11

Suits Against States — Restriction Of Judicial Power

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Third Congress on the 4th of March, 1794, and was declared to have been ratified in a message for the President to Congress dated the 8th of January, 1798, when twelve authenticated ratifications had been received. In fact, however, it had been adopted by the required twelve states as early as the 7th of February, 1795: Connecticut (May 8, 1794); Delaware (January 23, 1795); Georgia (November 29, 1794); Kentucky (December 7, 1794); Maryland (December 26, 1794); Massachusetts (June 26, 1794);

New Hampshire (June 16, 1794); New York (March 27, 1794); North Carolina (February 7, 1795); Rhode Island (March 31, 1794); Vermont (between October 9 and November 9, 1794); and Virginia (November 18, 1794). South Carolina ratified on December 4, 1797, prior to the President's message.

It resulted from the decision in the case of *Chilholm v. Georgia*, 2 Dall. (U.S.) 419, 1 L. Ed. 440 (1793), in which it was held that a state was suable in the Supreme Court by individual citizens of another state.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT 12

Election Of President And Vice-President

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Eighth Congress on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legisla-

tures of three-fourths of the seventeen states: Georgia, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia.

This amendment resulted from the Adams-Jefferson-Burr election contest for the presidency.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as

Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT 13

SECTION.

1. Slavery prohibited.
2. Power to enforce article.

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Thirty-Eighth Congress on the 1st of February, 1865, and was declared in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six states, viz.: Alabama, Arkansas, Connecticut, Georgia, Illinois, Indiana, Kan-

sas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Subsequent to the proclamation, it was ratified by California, Florida, Iowa, New Jersey, Oregon, and Texas.

§ 1. Slavery prohibited.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. Power to enforce article.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 14

SECTION.

1. Citizenship — Due process of law — Equal protection.
2. Representatives — Power to reduce apportionment.
3. Disqualification to hold office.

SECTION.

4. Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.
5. Power to enforce amendment.

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Thirty-Ninth Congress on the 16th day of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that the legislatures of the states of Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, West Virginia, and Wisconsin, being three-fourths and more of the several states of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each house of the Thirty-Ninth Congress: "Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six states, viz.: Alabama, July 13, 1868; Arkansas, April 6, 1868; Connecticut, June

30, 1866; Florida, June 9, 1868; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; Illinois ratified it January 15, 1867; Indiana, January 29, 1867; Iowa, April 3, 1868; Kansas, January 18, 1867; Louisiana, July 9, 1868; Maine, January 19, 1867; Massachusetts, March 20, 1867; Michigan, February 15, 1867; Minnesota, February 1, 1867; Missouri, January 26, 1867; Nebraska, June 15, 1867; Nevada, January 22, 1867; New Hampshire, July 7, 1866; New Jersey, September 11, 1866 (and the legislature of the same state passed a resolution in April, 1868, to withdraw its consent to it); New York ratified it January 10, 1867; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; Ohio ratified it January 11, 1867 (and the legislature of the same state passed a resolution in January, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Pennsylvania, February 13, 1867; Rhode Island, February 7, 1867; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; Tennessee, July 19, 1866; Vermont, November 9, 1866; West Virginia, January 16, 1867; and Wisconsin, February 13, 1867. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified it October 8, 1869. The amendment was rejected by Delaware February

8, 1867; by Kentucky January 10, 1867; not afterward ratified by any of these by Maryland March 23, 1867; and was states.

§ 1. Citizenship — Due process of law — Equal protection.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives — Power to reduce apportionment.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

§ 3. Disqualification to hold office.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

§ 4. Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay

any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. Power to enforce amendment.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT 15

SECTION.

1. Right of citizens to vote — Race or color not to disqualify.

SECTION.

2. Power to enforce amendment.

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Fortieth Congress on the 27th of February, 1869, and was declared in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven states. The dates of these ratifications were: Alabama, November 24, 1869; Arkansas, March 30, 1860; Connecticut, May 19, 1869; Florida, June 15, 1869; Georgia, February 2, 1870; Illinois, March 5, 1869; Indiana, May 13-14, 1869; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Louisiana, March 5, 1869; Maine, March 12, 1869; Massachusetts, March 9-12, 1869; Michigan, March

8, 1869; Minnesota, February 19, 1870; Mississippi, January 15-17, 1870; Missouri, January 10, 1870; Nebraska, February 17, 1870; Nevada, March 1, 1869; New Hampshire, July 7, 1869; New York, March 17-April 14, 1869 (and the legislature of the same state passed a resolution January 5, 1870, to withdraw its consent to it); North Carolina, March 5, 1869; Ohio, January 27, 1870; Pennsylvania, March 26, 1869; Rhode Island, January 18, 1870; South Carolina, March 16, 1869; Texas, February 18, 1870; Vermont, October 21, 1869; Virginia, October 8, 1869; West Virginia, March 3, 1869; Wisconsin, March 9, 1869.

§ 1. Right of citizens to vote — Race or color not to disqualify.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

§ 2. Power to enforce amendment.

The Congress shall have the power to enforce this article by appropriate legislation.

AMENDMENT 16

Income Tax

Publisher's Notes. This amendment was submitted to the legislatures of the several states, there being then forty-eight states, by a resolution of Congress passed on July 12, 1909, at the first session of the Sixty-first Congress, and was ratified according to a proclamation of the Secretary of State dated February 25, 1913, by the legislatures of the following states: Alabama, August 17, 1909; Arizona, April 9, 1912; Arkansas, April 22, 1911; California, January 31, 1911; Colorado, February 20, 1911; Delaware, February 3, 1913; Georgia, August 3, 1910; Idaho, January 20, 1911; Illinois, March 1, 1910; Indiana, February 6, 1911; Iowa, February 27, 1911; Kansas, March 6, 1911; Kentucky, February 8, 1910; Louisiana, July 1, 1912; Maine, March 31, 1911;

Maryland, April 8, 1910; Michigan, February 23, 1911; Minnesota, June 12, 1912; Mississippi, March 11, 1910; Missouri, March 16, 1911; Montana, January 31, 1911; Nebraska, February 11, 1911; Nevada, February 8, 1911; New Jersey, February 5, 1913; New Mexico, February 5, 1913; New York, July 12, 1911; North Carolina, February 11, 1911; North Dakota, February 21, 1911; Ohio, January 19, 1911; Oklahoma, March 14, 1910; Oregon, January 23, 1911; South Carolina, February 23, 1910; South Dakota, February 3, 1912; Tennessee, April 11, 1911; Texas, August 17, 1910; Washington, January 26, 1911; West Virginia, January 31, 1913; Wisconsin, May 26, 1911; and Wyoming, February 3, 1913.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT 17

Election Of Senators

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Sixty-Second Congress on the 16th day of May, 1912, and was declared, in a proclamation of the Secretary of State, dated the 31st of May, 1913, to have been ratified by the legislatures of the states of Arizona, Arkansas, California, Colorado, Connecticut, Idaho,

Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico (March 13, 1913), New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the

qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT 18

SECTION.

1. Prohibition against intoxicating liquors.

SECTION.

2. Power to enforce amendment.
3. Time limit for ratification.

Publisher's Notes. This amendment was repealed by Amendment 21.

The amendment was submitted to the legislatures of the several states by the Sixty-fifth Congress on the 17th of December, 1917, and was declared in a proclamation of the Secretary of State, dated the 29th of January, 1919, to have been ratified by the legislatures of the states of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas,

Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico (January 22, 1919), New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

§ 1. Prohibition against intoxicating liquors.

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ 2. Power to enforce amendment.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

§ 3. Time limit for ratification.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT 19

Woman Suffrage

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Sixty-Sixth Congress on the fifth of June, 1919, and was declared in a proclamation of the Secretary of State, dated the 26th of August, 1920, to have been ratified by the legislatures of the states of Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine,

Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico (February 21, 1920), New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 20

SECTION.

1. Executive and legislative departments — Terms of elective officers.
2. Annual meeting of congress — Date.
3. Succession to office of President or Vice-President.

SECTION.

4. Death of President or Vice-President — Selection of successor — Choice devolving on either house.
5. Effective date of amendment.
6. Time limit for ratification.

Publisher's Notes. This amendment was submitted to the legislatures of the several states by the Seventy-Second Congress on the 3rd day of March, 1932, and was declared in a proclamation of the Secretary of State, dated the 6th day of February, 1933, to have been ratified by the legislatures of the states of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho,

Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico (January 21, 1933), New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

§ 1. Executive and legislative departments — Terms of elective officers.

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such

terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ 2. Annual meeting of congress — Date.

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

§ 3. Succession to office of President or Vice-President.

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

§ 4. Death of President or Vice-President — Selection of successor — Choice devolving on either house.

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

§ 5. Effective date of amendment.

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

§ 6. Time limit for ratification.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT 21

SECTION.

1. Repeal of eighteenth amendment.
2. Intoxicating liquors, shipment into dry territory prohibited.

SECTION.

3. Ratification, time limit.

Publisher's Notes. This amendment was submitted to the several states by the Seventy-Second Congress on the 20th day of February, 1932, and was declared in a proclamation by the Secretary of State, dated the 5th day of December, 1933, to have been ratified by conventions in the states of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Dela-

ware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico (November 2, 1933), New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

§ 1. Repeal of eighteenth amendment.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. Intoxicating liquors, shipment into dry territory prohibited.

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. Ratification, time limit.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT 22

SECTION.

1. Restrictions on terms of President.

SECTION.

2. Ratification, time limit.

Publisher's Notes. This amendment was submitted to the several states by the Eightieth Congress on the 24th day of March, 1947, and was certified by the Administrator of General Services on March 1, 1951, as having been ratified by the legislatures of Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kan-

sas, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, and Wyoming.

§ 1. Restrictions on terms of President.

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

§ 2. Ratification, time limit.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT 23**SECTION.**

1. Presidential and Vice Presidential electors for District of Columbia.

SECTION.

2. Enforcement of article.

Publisher's Notes. This amendment was submitted to the several states by the Eighty-Sixth Congress and received in the Office of the Federal Register on June 17, 1960, and certified on the 3rd day of April, 1961, by the Administrator of General Services as having been ratified by the legislatures of the states of Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indi-

ana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

§ 1. Presidential and Vice Presidential electors for District of Columbia.

The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties

as provided by the twelfth article of amendment.

§ 2. Enforcement of article.

The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 24

SECTION.

1. Right to vote not denied for failure to pay poll tax.

SECTION.

2. Enforcement of article.

Publisher's Notes. This amendment was submitted to the several states by the Eighty-Seventh Congress and received in the Office of the Federal Register on August 29, 1962, and certified on the 4th day of February, 1964, by the Administrator of General Services as having been ratified by the legislatures of the states of Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, In-

diana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wisconsin.

§ 1. Right to vote not denied for failure to pay poll tax.

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

§ 2. Enforcement of article.

The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 25

SECTION.

1. Filling vacancy in office of President.
2. Filling vacancy in office of Vice President.
3. Declaration of disability by President — Acting President.

SECTION.

4. Determination of disability of President.

Publisher's Notes. This amendment was submitted to the several states by the Eighty-Ninth Congress and received in

the Office of the Federal Register on July 7, 1965, and certified on the 23rd day of February, 1967, by the Administrator of

General Services as having been ratified by the legislatures of the states of Alaska, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Mon-

tana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

§ 1. Filling vacancy in office of President.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

§ 2. Filling vacancy in office of Vice President.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

§ 3. Declaration of disability by President — Acting President.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

§ 4. Determination of disability of President.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble,

determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

AMENDMENT 26

SECTION.

1. Right to vote not denied to citizens eighteen years or older.

SECTION.

2. Enforcement of article.

Publisher's Notes. This amendment was submitted to the several states by the Ninety-Second Congress and received in the Office of the Federal Register on March 23, 1971, and certified on the 5th day of July, 1971, by the Administrator of General Services as having been ratified by the legislatures of the states of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Ha-

waii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin.

§ 1. Right to vote not denied to citizens eighteen years or older.

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

§ 2. Enforcement of article.

The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 27

Compensation of Senators and Representatives

Publisher's Notes. This amendment was proposed by congress on September 25, 1789, and ratified by the required majority of states by virtue of the 38th

ratification in 1992. The amendment was certified by the Archivist of the United States on May 18, 1992. See 57 Fed. Reg. 21, 187 (1992).

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.

CONSTITUTION OF THE STATE OF ARKANSAS OF 1874

ARTICLE.

- Preamble.
- 1. BOUNDARIES.
- 2. DECLARATION OF RIGHTS.
- 3. FRANCHISE AND ELECTIONS.
- 4. DEPARTMENTS.
- 5. LEGISLATIVE DEPARTMENT.
- 6. EXECUTIVE DEPARTMENT.
- 7. JUDICIAL DEPARTMENT.
- 8. APPORTIONMENT — MEMBERSHIP IN GENERAL ASSEMBLY.
- 9. EXEMPTION.
- 10. AGRICULTURE, MINING AND MANUFACTURE.

ARTICLE.

- 11. MILITIA.
 - 12. MUNICIPAL AND PRIVATE CORPORATIONS.
 - 13. COUNTIES, COUNTY SEATS AND COUNTY LINES.
 - 14. EDUCATION.
 - 15. IMPEACHMENT AND ADDRESS.
 - 16. FINANCE AND TAXATION.
 - 17. RAILROADS, CANALS AND TURNPIKES.
 - 18. JUDICIAL CIRCUITS.
 - 19. MISCELLANEOUS PROVISIONS.
 - 20. "HOLFORD" BONDS NOT TO BE PAID.
- SCHEDULE.

Publisher's Notes. This Constitution was ratified by the people October 13, 1874, and its adoption was proclaimed October 30, 1874. See Proclamation by state board of election supervisors, following Schedule to Constitution.

A constitutional convention was held in

accordance with Acts 1977 (Ex. Sess.), No. 3, as amended by Acts 1979, No. 622, and a new constitution was proposed. The proposed constitution was defeated at the general election held November 4, 1980. Returns: For 276,257; Against 464,210.

CASE NOTES

ANALYSIS

In general.
Construction.

In General.

On appeal, constitutional issues will not be decided unless their determination is essential to the disposition of the case.

Thompson v. State, 42 Ark. App. 254, 856 S.W.2d 319 (1993).

Construction.

The present constitution must be construed in context of the law in existence at the time of its adoption. State v. Bostick, 313 Ark. 596, 856 S.W.2d 12 (1993).

PREAMBLE

We, the People of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government; for our civil and religious liberty; and desiring to perpetuate its blessings, and secure the same to our selves and posterity; do ordain and establish this Constitution.

ARTICLE 1

BOUNDARIES

We do declare and establish, ratify and confirm, the following as the permanent boundaries of the State of Arkansas, that is to say: Beginning at the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees of north latitude, running thence west with said parallel of latitude to the middle of the main channel of the St. Francis River; thence up the main channel of said last-named river to the parallel of thirty-six degrees thirty minutes of north latitude; thence west with the southern boundary line of the State of Missouri to the southwest corner of said last-named state; thence to be bounded on the west to the north bank of Red River, as by act of Congress and treaties existing January 1, 1837, defining the western limits of the Territory of Arkansas, and to be bounded across and south of Red River by the boundary line of the State of Texas as far as to the northwest corner of the State of Louisiana; thence easterly with the northern boundary line of said last-named State to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said last-named river, including an island in said river known as "Belle Point Island," and all other land originally surveyed and included as a part of the Territory or State of Arkansas, to the thirty-sixth degree of north latitude, the place of beginning.

SEAT OF GOVERNMENT

The seat of government of the state of Arkansas shall be and remain at Little Rock, where it is now established.

Cross References. Western boundary extension, § 1-1-101.

CASE NOTES

ANALYSIS

In general.

Arkansas — Mississippi.

Arkansas — Missouri.

Arkansas — Tennessee.

Arkansas — Texas.

Description of land.

Determination by legislature.

In General.

Upon petition for temporary injunction against the liquefied petroleum gas control board of Arkansas and its director which was filed in Calhoun County, seeking to prevent the cancelation of his per-

mit to engage in a butane gas business, the court took judicial notice that the official residence of the gas board and its director was Pulaski County, the seat of government as provided in this article; therefore, the proper venue was Pulaski County and not in Calhoun County where the petition was filed. *Liquefied Petroleum Gas Bd. v. Newton*, 230 Ark. 267, 322 S.W.2d 67 (1959).

Arkansas — Mississippi.

The boundary between Arkansas and Mississippi was fixed by acts admitting states to Union as the middle of the main

channel of navigation. *Arkansas v. Mississippi*, 250 U.S. 39, 39 S. Ct. 422, 63 L. Ed. 832 (1919).

Arkansas — Missouri.

The Arkansas Constitution fixes the physical boundary of that state as the middle of the main channel of the St. Francis River. *Brown v. State*, 109 Ark. 373, 159 S.W. 1132 (1913).

Arkansas — Tennessee.

The boundary between Arkansas and Tennessee is the middle of the main navigation channel in 1783, subject to changes from natural and gradual processes. *Arkansas v. Tennessee*, 246 U.S. 158, 38 S. Ct. 301, 62 L. Ed. 638 (1918).

State courts are concluded on state boundary questions by decisions of the U.S. Supreme Court, and Tennessee jurisdiction of island was not changed by avulsion of main channel to other side of island. *Kissell v. Stevens*, 164 Ark. 195, 261 S.W. 299 (1924).

Arkansas — Texas.

The boundary line between Arkansas and Texas is the south bank of the Red

River. The jurisdictional line is changed by accretion or reliction but not by avulsion. *Deloney v. State*, 88 Ark. 311, 115 S.W. 138 (1908).

Description of Land.

Land surveys and descriptions thereof must be read solely with reference to lands lying within the state. *Alphin v. Banks*, 193 Ark. 563, 102 S.W.2d 558 (1937).

Determination by Legislature.

Legislative acts fixing state boundaries will not be determined upon an agreed statement of facts. *Ex parte Thompson*, 86 Ark. 69, 109 S.W. 1171 (1908).

The determination of the boundaries of the state is a question to be determined by the legislative department. *Deloney v. State*, 88 Ark. 311, 115 S.W. 138 (1908).

When the legislative department fixes the boundary of the state, the courts will not inquire into its authority to do so. *State v. Bowman*, 89 Ark. 428, 116 S.W. 896 (1909).

Cited: *Mississippi v. Arkansas*, 415 U.S. 289, 94 S. Ct. 1046, 39 L. Ed. 2d 333 (1974).

ARTICLE 2

DECLARATION OF RIGHTS

SECTION.

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RESEARCH REFERENCES

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 385 et seq.

C.J.S. 16A C.J.S., Constitutional Law, § 444 et seq.

CASE NOTES

Implied Rights.

Implied rights under this article to travel, reside, and teach were not violated

by school district residency policy. *McClelland v. Paris Pub. Sch.*, 294 Ark. 292, 742 S.W.2d 907 (1988).

§ 1. Source of power.

All political power is inherent in the people and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same, in such manner as they may think proper.

CASE NOTES

ANALYSIS

In general.

Constitutional conventions.

In General.

The position of delegate to the Constitutional Convention is not derived from the Constitution, but from the power inherent in the people provided for in this

section. *Harvey v. Ridgeway*, 248 Ark. 35, 450 S.W.2d 281 (1970).

Constitutional Conventions.

The one-person, one-vote principle does not apply to constitutional conventions. *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995).

Cited: *Rockefeller v. Hogue*, 244 Ark. 1029, 429 S.W.2d 85 (1968).

§ 2. Freedom and independence.

All men are created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

RESEARCH REFERENCES

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 560 et seq.

Ark. L. Rev. Gitelman and McIvor, Domicile, Residence and Going to School in Arkansas, 37 Ark. L. Rev. 843.

Note, *Dupree v. Alma School District No. 30: Mandate for an Equitable State Aid Formula*, 37 Ark. L. Rev. 1019.

Comment, Does Arkansas Code Section 5-14-122 Violate Arkansas's Constitutional Guarantee of Equal Protection?, 51 Ark. L. Rev. 521.

C.J.S. 16A C.J.S., Constitutional Law, § 472 et seq.

UALR L.J. Sallings, Survey of Arkansas Law, 3 UALR L.J. 277.

Notes, Constitutional Law — Equal Protection and School Funding in Arkansas, *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1953), 6 UALR L.J. 541.

Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions

as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

CASE NOTES

ANALYSIS

Bulk sales law.
Constitutional convention.
Discriminatory regulations.
Guest statute.
Long arm statute.
Price fixing.
Private hospitals.
Property rights.
Public hospitals.
Public school financing.
Right of privacy.
Right to acquire property.

Bulk Sales Law.

Act requiring purchaser of stock of goods in bulk to give notice to creditors before purchase does not violate Arkansas Constitution. *Stuart v. Elk Horn Bank & Trust Co.*, 123 Ark. 285, 185 S.W. 263 (1916).

Constitutional Convention.

Statute which provided for a limited constitutional convention not ratified by the electorate was unconstitutional in that it would permit the delegates to such convention to exercise a power reserved to the electorate by this section without ratification by the electorate. *Pryor v. Lowe*, 258 Ark. 188, 523 S.W.2d 199 (1975).

Discriminatory Regulations.

Statute regulating only coal mines employing ten or more men underground does not conflict with Arkansas Constitution securing liberty and equality of rights to all persons. *McLean v. State*, 81 Ark. 304, 98 S.W. 729 (1906), *aff'd*, 211 U.S. 539, 29 S. Ct. 206, 53 L. Ed. 315 (1909).

Statute permitting cities of first class to prohibit sale of merchandise by auction was held unconstitutional. *Balesh v. City of Hot Springs*, 173 Ark. 661, 293 S.W. 14 (1927).

Statute allowing discriminatory regulation of manufacture of ice was unconstitutional. *Cap F. Bourland Ice Co. v. Frank Utils. Co.*, 180 Ark. 770, 22 S.W.2d 993 (1929).

Guest Statute.

Where any doubt about the constitutionality of the Guest Statute had to be resolved in favor of its constitutionality, the Supreme Court could not say that the statute had no fair and rational relation to the objectives of the legislature of preventing collusive lawsuits and encouraging hospitality and, therefore, the Guest Statute which denied recovery to a guest except for willful and wanton negligence was not violative of this section. *Davis v. Cox*, 268 Ark. 78, 593 S.W.2d 180 (1980).

Long Arm Statute.

A statute giving the state courts personal jurisdiction over nonresident owners of real estate in the state in a cause of action arising from such ownership does not violate this section. *Bowsher v. Digby*, 243 Ark. 799, 422 S.W.2d 671 (1967).

Price Fixing.

Statute making agreement between individuals as to payment of wages unlawful was void as it applies to natural persons. *Leep v. St. Louis, I.M. & S.Ry.*, 58 Ark. 407, 25 S.W. 75, appeal dismissed, 159 U.S. 267, 15 S. Ct. 1042, 40 L. Ed. 142 (1894).

Statute fixing prices, wages, and hours for barber shops violates constitutional provisions as to acquisition of property. *Noble v. Davis*, 204 Ark. 156, 161 S.W.2d 189 (1942).

Private Hospitals.

A private hospital in an internal administrative proceeding is not subject to the reasonableness standards of equal protection and due process under this section and Const. Art. 2, § 3. *Lubin v. Crittenden Hosp. Ass'n*, 295 Ark. 429, 748 S.W.2d 663 (1988).

Property Rights.

The right of a retailer to sell its own property at its own price is a right guaranteed by the Constitution as a valuable property right. *Union Carbide & Carbon*

Corp. v. White River Distribs., Inc., 224 Ark. 558, 275 S.W.2d 455 (1955).

Statute requiring nonsigners in lawful possession of trademarked articles to charge prices to their knowledge set in fair trade contracts with other retailers is unconstitutional as a deprivation of property without due process of law in abuse of the police power as not protecting the public welfare. *Union Carbide & Carbon Corp. v. White River Distribs., Inc.*, 224 Ark. 558, 275 S.W.2d 455 (1955).

Public Hospitals.

Public hospitals are prohibited from acting arbitrarily and capriciously under this section. *Brandt v. St. Vincent Infirmary*, 287 Ark. 431, 701 S.W.2d 103 (1985).

Public School Financing.

The statutory method of state financing of public schools and of state vocational funding, under which system the local tax base determined the amount of state funding received by a district and school districts were required to establish vocational programs with local funds before receiving state funds for such programs, violated the equal protection guarantees of this section. *Dupree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983).

The school funding system in place between 1994 and 2000 violated the equality provisions of this section and Ark. Const. Art. 2, §§ 3 and 18, because the system did not ensure the equality of actual expenditures of funds spent on the students of each school district by the state; how-

ever, the state was given until January 1, 2004 to create a system that ensured equality of funding. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

Right of Privacy.

The portion of an Arkansas statute criminalizing specific acts of private, consensual, sexual intimacy between persons of the same sex is unconstitutional as it infringes upon an individual's fundamental right to privacy. *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002).

Right to Acquire Property.

The requirement of notice to creditors by a purchaser of a stock of goods does not violate the right of acquiring property. *Stuart v. Elk Horn Bank & Trust Co.*, 123 Ark. 285, 185 S.W. 263 (1916).

Right of individual to acquire and possess and protect property is inherent and inalienable and declared higher than any constitutional sanction. *Young v. Gurdon*, 169 Ark. 399, 275 S.W. 890 (1925).

Cited: *Union Carbide & Carbon Corp. v. White River Distribs., Inc.*, 118 F. Supp. 541 (E.D. Ark. 1954); *City of Little Rock v. Andres*, 237 Ark. 658, 375 S.W.2d 370 (1964); *Carroll v. Johnson*, 263 Ark. 280, 565 S.W.2d 10 (1978); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Kastl v. State*, 303 Ark. 358, 796 S.W.2d 848 (1990); *Honor v. Yamuchi*, 307 Ark. 324, 820 S.W.2d 267 (1991); *Shepherd v. Washington County*, 331 Ark. 480, 962 S.W.2d 779 (1998).

§ 3. Equality before the law.

The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity; nor exempted from any burden or duty, on account of race, color or previous condition.

RESEARCH REFERENCES

ALR. Constitutionality of assault and battery laws limited to protection of females only or which provide greater penalties for males than for females. 5 ALR 4th 708.

Race as factor in custody award or proceedings. 10 ALR 4th 796.

Statutory or constitutional provision allowing widow but not widower to take against will and receive interest, etc., as

denial of equal protection. 18 ALR 4th 910.

Public utilities — validity of preferential rates for elderly or low-income persons. 29 ALR 4th 615.

Refusal to rent residential premises to persons with children as unlawful discrimination. 30 ALR 4th 1187.

Propriety of automobile insurer's policy of refusing insurance, or requiring advanced rates, because of age, sex, residence, or handicap. 33 ALR 4th 523.

Validity, construction, and application of state statute forbidding unfair trade practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like. 41 ALR 4th 675.

Federal and state constitutional provisions as prohibiting discrimination in employment on basis of gay, lesbian, or bisexual sexual orientation or conduct. 96 ALR 5th 391.

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 808 et seq.

Ark. L. Rev. Note, Divorce and the Division of Marital Property in Arkansas — Equal or Equitable?, 35 Ark. L. Rev. 671.

Gitelman and McIvor, Domicile, Residence and Going to School in Arkansas, 37 Ark. L. Rev. 843.

Note, Dupree v. Alma School District No. 30: Mandate for an Equitable State Aid Formula, 37 Ark. L. Rev. 1019.

Comment, Does Arkansas Code Section 5-14-122 Violate Arkansas's Constitutional Guarantee of Equal Protection?, 51 Ark. L. Rev. 521.

C.J.S. 16B C.J.S., Constitutional Law, § 652 et seq. and § 700 et seq.

UALR L.J. Hawthorne, Note: Family Law — Divorce — Constitutionality of Arkansas Property Settlement and Alimony Statutes, 2 UALR L.J. 123.

Survey of Arkansas Law: Family Law, 4 UALR L.J. 213.

Notes, Constitutional Law — Equal Protection and School Funding in Arkansas, Dupree v. Alma School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1953), 6 UALR L.J. 541.

Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

CASE NOTES

ANALYSIS

Bank records.
Class legislation.
Discrimination.
Divorce.
Fish and game.
Guest statute.
Habitual criminal statute.
Highway construction regulation.
Law practice regulation.
Legitimacy of children.
Livestock health regulations.
Local option.
Long arm statute.
Medical malpractice.
Price fixing.
Private hospitals.
Property rights.
Public hospitals.
Public school financing.
Redevelopment law.
Sodomy.

Special legislation.
State employees.
Taxation.
Voting rights.
Workers' compensation benefits.

Bank Records.

This section was not violated by an order of the prosecuting attorney to a bank to appear before him and produce copies of records of a depositor's account. First Nat'l Bank v. Roberts, 242 Ark. 912, 416 S.W.2d 316 (1967).

Class Legislation.

Legislation which establishes classification does not carry with it the presumption of constitutionality under an equal protection challenge where the class it establishes is "suspect" and, in such situations, the state must demonstrate compelling interest for the legislation. Boshears v. Arkansas Racing Comm'n, 258 Ark. 741, 528 S.W.2d 646 (1975).

Discrimination.

There was no discrimination against the defendant in the selection of a special grand jury on the ground that all members of the grand jury belonged to a certain political faction where the evidence showed that the grand jury was fairly selected. *Rowland v. State*, 213 Ark. 780, 213 S.W.2d 370 (1948), cert. denied, 336 U.S. 18, 69 S. Ct. 641, 93 L. Ed. 1081.

Statute which purports to exempt certain types of litigation which constitutes an unlawful classification within a class without reasonable relation and is discriminatory, and therefore unconstitutional. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

A gender-based classification which, as compared to the gender-neutral one, generates additional benefits only for those it has no reason to prefer cannot survive equal protection scrutiny. *Hatcher v. Hatcher*, 265 Ark. 681, 580 S.W.2d 475 (1979).

Defendant's arguments regarding a *Batson v. Kentucky* violation were not preserved for appellate review where the appellate court could not discern what the state was attempting to assert with respect to one venire person and, while the trial court on its own provided an additional reason for striking a second venire person, defendant did not object when the trial court interrupted the state's race-neutral explanation as to the two venire persons; in fact, defendant failed to offer any additional argument or other proof to rebut the state's and the trial court's race-neutral explanations and to show that the state's motives were not genuine, as was required during the third stage of the *Batson* process. *Lewis v. State*, — Ark. App. —, — S.W.3d —, 2004 Ark. App. LEXIS 7 (Jan. 7, 2004).

Divorce.

A divorce action brought under the former statute, which was undisputedly gender-based, was unconstitutional as violative of equal protection rights; however, the successor statute is gender-neutral and therefore constitutional. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980).

Fish and Game.

The statutes requiring commercial fishermen to throw back into the water small

fish caught by them did not create such an arbitrary or illegal discrimination as to violate provisions of the Constitution when noncommercial fishermen are permitted to catch and consume such fish. *Fugett v. State*, 208 Ark. 979, 188 S.W.2d 641 (1945).

Guest Statute.

The Guest Statute which denied recovery to a guest except for willful and wanton negligence was not violative of this section. *Davis v. Cox*, 268 Ark. 78, 593 S.W.2d 180 (1980).

Habitual Criminal Statute.

The habitual criminal statute did not violate the equal protection clause of the state Constitution. *Poe v. State*, 251 Ark. 35, 470 S.W.2d 818 (1971).

Highway Construction Regulation.

Order of highway department setting out certain requirements for construction of access driveways to state highways from abutting property, which applied only to new constructions and not to constructions completed prior thereto and required that those desiring to construct such a driveway obtain a permit, was not discriminatory under this section. *Arkansas State Hwy. Comm'n v. Hightower*, 238 Ark. 569, 383 S.W.2d 279 (1964).

Law Practice Regulation.

Section was not violated by former provision giving nonresident attorneys the right to practice in this state where Tennessee attorney acted as associate counsel to resident attorneys in particular medical malpractice case. *McKenzie v. Burris*, 255 Ark. 330, 500 S.W.2d 357 (1973).

Legitimacy of Children.

Statute creating a presumption of the legitimacy of a child born during a marriage does not discriminate against blacks. *Brown v. Danley*, 263 Ark. 480, 566 S.W.2d 385, cert. denied, 439 U.S. 983, 99 S. Ct. 572, 58 L. Ed. 2d 654 (1978).

Livestock Health Regulations.

Under federal schedule for payment of cattle required to be disposed of because of brucellosis, treating all beef cattle owners alike was valid. *Burt v. Arkansas Livestock & Poultry Comm'n*, 278 Ark. 236, 644 S.W.2d 587 (1983).

Local Option.

Act granting licenses to sell liquor only upon petition of majority of adult white

inhabitants of a city or town was not unconstitutional. *Havis v. Philpot*, 115 Ark. 250, 170 S.W. 1005 (1914).

Long Arm Statute.

A statute giving the state courts personal jurisdiction over nonresident owners of real estate in the state in a cause of action arising from such ownership does not violate this section. *Bowsher v. Digby*, 243 Ark. 799, 422 S.W.2d 671 (1968).

Medical Malpractice.

A legitimate state purpose is served by the notice requirement of statute governing actions for medical injuries and it is not unconstitutional. *Simpson v. Fuller*, 281 Ark. 471, 665 S.W.2d 269 (1984).

Section 16-114-206(b), which sets forth the burden of proof for plaintiffs in medical malpractice cases involving informed consent, is constitutional because there is a rational relationship between the burden of proof required and the achievement of a legitimate governmental objective; therefore, summary judgment was properly granted in favor of a physician who submitted an affidavit of an expert regarding proper standard of care because the patient failed to offer an affidavit from his own expert witness. *Eady v. Lansford*, 351 Ark. 249, 92 S.W.3d 57 (2002).

Price Fixing.

Statute fixing prices at which liquor could be sold was a valid exercise of the police power and did not violate this section. *Gipson v. Morlèy*, 217 Ark. 560, 233 S.W.2d 79 (1961).

Private Hospitals.

A private hospital in an internal administrative proceeding is not subject to the reasonableness standards of equal protection and due process under this section and Const. Art. 2, § 2. *Lubin v. Crittenden Hosp. Ass'n*, 295 Ark. 429, 748 S.W.2d 663 (1988).

Property Rights.

Act denying aliens incapable of becoming citizens of United States and unprotected by treaty the right to acquire property was not in conflict with Arkansas Constitution. *Applegate v. Luke*, 173 Ark. 93, 291 S.W. 978 (1927).

Where testimony showed commercial use of property was the only way it had reasonable and satisfactory value, refusal to rezone property for such use was arbitrary,

unlawful and discriminatory. *City of Little Rock v. Gardner*, 239 Ark. 54, 386 S.W.2d 923 (1965).

One who acquires a life estate by will or deed does not have the same right of partition or commutation as one who holds a life estate in land by virtue of dower or curtesy, and the owner of a life estate created by a will or deed is not denied equal protection of or equal rights under the law because of the different treatment. *Staggs v. Staggs*, 277 Ark. 315, 641 S.W.2d 29 (1982).

Public Hospitals.

Public hospitals are prohibited from acting arbitrarily and capriciously under this section. *Brandt v. St. Vincent Infirmary*, 287 Ark. 431, 701 S.W.2d 103 (1985).

Public School Financing.

The statutory method of state financing public schools and of state vocational funding, under which system the local tax base determined the amount of state funding received by a district and school districts were required to establish vocational programs with local funds before receiving state funds for such programs, violated this section. *Dupree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983).

The school funding system in place between 1994 and 2000 violated the equality provisions of this section and Ark. Const. Art. 2, §§ 2 and 18, because the system did not ensure the equality of actual expenditures of funds spent on the students of each school district by the state; however, the state was given until January 1, 2004 to create a system that ensured equality of funding. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

Redevelopment Law.

The "Urban Development Law", § 14-169-601 et seq. and § 14-169-701 et seq., does not violate this section. *Rowe v. Housing Auth.*, 220 Ark. 698, 249 S.W.2d 551 (1952).

Sodomy.

The portion of an Arkansas statute criminalizing specific acts of private, consensual, sexual intimacy between persons of the same sex is an unconstitutional

violation of Arkansas's Equal Rights Amendment. *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002).

Special Legislation.

Statute punishing railroad employees for destroying stock killed by trains is not special legislation and is constitutional. *Bannon v. State*, 49 Ark. 167, 4 S.W. 655 (1887).

State Employees.

The statutes which make the workers' compensation commission a "claims commission" in connection with claims by state employees for injuries or death growing out of their employment by the state and provides that, in administering its duties in connection with such claims, the workers' compensation commission shall apply the compensation law as it relates to private industry, does not violate this section. *Boshears v. Arkansas Racing Comm'n*, 258 Ark. 741, 528 S.W.2d 646 (1975).

Taxation.

Inheritance tax is laid upon privilege of succession and not subject to same provisions with respect to equality under this section as taxes levied upon property. *State v. Handlin*, 100 Ark. 175, 139 S.W. 1112 (1911).

A provision in the gasoline tax law that the tax on fuels purchased outside the state and used in the state shall be determined on the basis of five miles per gallon of distillate fuels, as applied to interstate bus companies that actually obtain 6.3 miles per gallon, is arbitrary, unreasonable, discriminatory, and violative of this section. *Larey v. Continental S. Lines*, 243 Ark. 278, 419 S.W.2d 610 (1967).

A tax which discriminates between mass communicators delivering substantially the same service is unconstitutional; thus, an act which levied a tax on cable television enterprises but did not tax the proceeds resulting from the "unscrambling" of satellite signals, a similar service, imposed a tax which cannot pass muster. *Medlock v. Pledger*, 301 Ark. 483, 785 S.W.2d 202 (1990), *aff'd in part, rev'd in part*, 499 U.S. 439, 111 S. Ct. 1438, 113 L. Ed. 2d 494 (1991).

Regardless of any asserted disparate treatment, the rational basis test is the analysis applicable to an equal protection challenge of tax legislation; in order for an

appellate court to strike down a classification made by taxation legislation, the classification must be purely arbitrary and the discrimination must be invidious. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

The party attacking taxation legislation has the burden to negate every conceivable basis which might support it. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

With respect to taxation legislation, the due process analysis is the same as the equal protection analysis. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

Proration of tax for licenses issued in the last half of the tax year, but not the first half of the tax year, did not violate the equal protection or due process clauses of the U.S. (see U.S. Const. Amend. 14) and Arkansas Constitutions (see this section and Ark. Const., Art. 2, § 8). *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

Voting Rights.

Residents of an area which was in the process of being annexed to a city were not deprived of equal protection by not being allowed to vote in a municipal bond election held before the annexation became effective. *Tanner v. City of Little Rock*, 261 Ark. 573, 550 S.W.2d 177 (1977).

Workers' Compensation Benefits.

The refusal to retroactively apply an amendment to a child who had received death benefits under the preexisting section did not deprive him of equal protection since the law applied alike to all dependents as it existed at the date of the child's grandfather's death. *Park v. Weyerhaeuser Co.*, 262 Ark. 668, 560 S.W.2d 226 (1978).

Cited: *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966); *Goodloe v. Goodloe*, 253 Ark. 550, 487 S.W.2d 593 (1972); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Kastl v. State*, 303 Ark. 358, 796 S.W.2d 848 (1990); *Bosworth v. Pledger*, 305 Ark. 598, 810 S.W.2d 918 (1991); *Medlock v. Pledger*, 305 Ark. 610, 808 S.W.2d 785 (1991); *Seyller v. Pierce & Co.*, 306 Ark. 474, 816 S.W.2d 577 (1991); *Cook v. State*, 321 Ark. 641, 906 S.W.2d 681 (1995); *O'Neill v. State*, 322 Ark. 299, 908 S.W.2d 637 (1995).

§ 4. Right of assembly and of petition.

The right of the people peaceably to assemble, to consult for the common good; and to petition, by address or remonstrance, the government, or any department thereof, shall never be abridged.

RESEARCH REFERENCES

ALR. Validity, under state constitution, of private shopping center's prohibition or regulation of political, social, or religious expression or activity. 38 ALR 4th 1219.

Validity and construction of "terroristic threat" statutes. 45 ALR 4th 949.

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 531 et seq.

C.J.S. 16B C.J.S., Constitutional Law, § 612 et seq.

CASE NOTES

ANALYSIS

Freedom of association.
Local option.

Freedom of Association.

Order of court requiring association to produce records listing the names and addresses of officers and employees and records, files, papers, correspondence, deposit slips, canceled checks and reports, but did not require a production of the membership lists, was not void because the membership lists were privileged under the provisions of the constitution. NAACP v. State, 229 Ark. 840, 319 S.W.2d 33 (1958), cert. denied, 360 U.S. 909, 79 S. Ct. 1293, 3 L. Ed. 2d 1259 (1959).

Where evidence showed that disclosure of the membership list of the local branches of the National Association for the Advancement of Colored People would significantly interfere with the freedom of association of the members, local ordinance requiring submission of membership lists to city interfered with the freedom of speech and assembly and was unconstitutional. Bates v. City of Little

Rock, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960).

Statute which provides that, if the attorney-general of Arkansas should have reason to believe that any organization is attempting to defraud the state of Arkansas of its taxes, he is authorized to procure an ex parte order from any chancery court and have access to all of the files, records, correspondence and other data of said organization would act as a deterrent to the organization's right to freedom of association and, therefore, would be unconstitutional under the ruling of Bates v. City of Little Rock, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960), especially in view of the circumstances under which it was enacted. Bennett v. NAACP, 236 Ark. 750, 370 S.W.2d 79 (1963).

Local Option.

Act providing for licenses to sell liquor granted only upon petition of majority of adult white inhabitants of a city or town does not violate this section. Havis v. Philpot, 115 Ark. 250, 170 S.W. 1005 (1914).

§ 5. Right to bear arms.

The citizens of this State shall have the right to keep and bear arms, for their common defense.

RESEARCH REFERENCES

ALR. Validity of state statutes restricting right of aliens to bear arms. 28 ALR 4th 1096.

UALR L.J. Oliver, Rejecting the "Whip-

ping-Boy" approach to tort law: Well-made handguns are not defective products, 14 UALR L.J. 1.

CASE NOTES

ANALYSIS

In general.
Concealed weapons.
Sale.

In General.

Right to bear arms refers to arms used for purposes of war and legislature may prohibit wearing of such weapons as are not used in civilized warfare and would not contribute to the common defense. *Fife v. State*, 31 Ark. 455 (1876).

The legislature may regulate somewhat the mode and occasion of wearing war arms, but the prohibition of a citizen wearing or carrying a war arm, except upon his own premises, or on a journey, or when acting as or in aid of an officer, is an unwarranted restriction of a constitutional right. *Wilson v. State*, 33 Ark. 557 (1878).

Concealed Weapons.

Statute making the wearing of concealed weapons a penal offense was not

contrary to the Constitution of the United States or of the State of Arkansas. *State v. Buzzard*, 4 Ark. 18 (1842) (decision under prior Constitution).

Act prohibiting wearing or carrying any pistol such as is used in the army or navy of the United States in any manner except uncovered and in the hand, save under special circumstances, was constitutional. *Haile v. State*, 38 Ark. 564 (1882).

Statute prohibiting carrying of pistol as weapon refers to pocket pistols of a size to be concealed about the person and used in private quarrels. *State v. Wardlaw*, 43 Ark. 73 (1884).

Sale.

Act making the sale of any pistol except such as are used in the army or navy of the United States and known as the navy pistol a misdemeanor was constitutional. *Dabbs v. State*, 39 Ark. 353 (1882).

§ 6. Liberty of the press and of speech — Libel.

The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions, is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel, the truth may be given in evidence to the jury; and, if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party charged shall be acquitted.

RESEARCH REFERENCES

ALR. Validity and construction of state statute or ordinance prohibiting picketing, parading, demonstrating, or appearing in public while masked or disguised. 2 ALR 4th 1241.

Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR 4th 741.

Validity and construction of statutes or ordinances prohibiting profanity or profane swearing or cursing. 5 ALR 4th 956.

Validity and construction of statutes or ordinances prohibiting or restricting distribution of commercial advertising to private residences. 12 ALR 4th 851.

Validity, propriety, and effect of allowing or prohibiting media's broadcasting, recording, or photographing court proceedings. 14 ALR 4th 121.

Statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR 4th 600.

Propriety of order forbidding news media from publishing names and addresses of jurors in criminal case. 36 ALR 4th 1126.

Validity, under state constitution, of private shopping center's prohibition or regulation of political, social, or religious expression or activity. 38 ALR 4th 1219.

State trespass prosecution for unauthorized entry or occupation, for public demonstration purposes, of business, industrial, or utility premises. 41 ALR 4th 773.

Validity and construction of "terroristic threat" statutes. 45 ALR 4th 949.

First Amendment protection afforded to commercial and home video games. 106 ALR 5th 337.

First amendment challenges to display of religious symbols on public property. 107 ALR 5th 1.

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 496 et seq.

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Notes, KARK-TV v. Simon: The Current Status of the "Fair Report" Privilege in Arkansas, 38 Ark. L. Rev. 181.

Notes, The Free Press-Fair Trial Controversy: A New Standard for Closure Mo-

tions in Criminal Proceedings, 38 Ark. L. Rev. 403.

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UALR L.J. Survey of Arkansas Law: Constitutional Law, 4 UALR L.J. 179.

Note, Constitutional Law — Anti-Bias Crime Legislation and the First Amendment — Supreme Court Upholds Wisconsin's Penalty Enhancement Law, *Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993), 16 UALR L.J. 659.

Note, Constitutional Law — Commercial Speech — Face-to-Face Solicitation by Certified Public Accountants (But Not Attorneys?) is Protected Speech Under the First Amendment, 16 UALR L.J. 683.

Note, Constitutional Law — First Amendment and Freedom of Speech — Public Employers Must Conduct a Reasonable Investigation to Determine if an Employee's Speech is Protected Before Discharging the Employee Based Upon the Speech. *Waters v. Churchill*, 114 S. Ct. 1878 (1994), 18 UALR L.J. 463.

CASE NOTES

ANALYSIS

Crime reporting.

Federal law.

Free press.

Gag orders.

Membership lists.

Picketing.

Crime Reporting.

Where defendant was charged with four counts of rape which were committed in the Quapaw Quarter of Little Rock during the summer of 1978, the trial court could not enjoin a newspaper from referring to the accused as the "Quapaw Quarter rapist" in news stories published prior to the trial. *Arkansas Gazette Co. v. Lofton*, 269 Ark. 109, 598 S.W.2d 745 (1980).

Federal Law.

This section and § 16-85-510 would not shield a television network from a federal grand jury subpoena to turn over video footage and the transcript of an interview with a witness who refused to testify before the grand jury; state law privileges are inapplicable in such a situation. In re

Grand Jury Subpoena ABC, 947 F. Supp. 1314 (E.D. Ark. 1996).

Free Press.

Numerous instances have arisen wherein attorneys are appointed to represent indigent prisoners and the attorney has been embarrassed by seeing his name in print relative to the defense made, though no wrongful act had been committed by the attorney, but under our system of government and its democratic processes, a free press is assured, and a conditional privilege is accorded to newspaper reports of judicial proceedings. *Roberts v. Love*, 231 Ark. 886, 333 S.W.2d 897, cert. denied, 364 U.S. 825, 81 S. Ct. 64, 5 L. Ed. 2d 55 (1960).

Any restraint on the freedom of the press, even though narrow in scope and duration, is subject to the closest scrutiny and will be upheld only upon a clear showing that an exercise of this right presents a clear and imminent threat to the fair administration of justice. *Arkansas Gazette Co. v. Lofton*, 269 Ark. 109, 598 S.W.2d 745 (1980).

To force a privately owned newspaper to

publish articles written by its reporters against their editorial judgment would be to advance the First Amendment rights of the reporter over the free press rights granted to the newspaper. *Manson v. Little Rock Newspapers, Inc.*, 42 F. Supp. 2d 856 (E.D. Ark. 1999), *aff'd*, 200 F.3d 1172 (8th Cir. 2000).

Gag Orders.

A gag order in a juvenile proceeding was too broad and constituted a prior restraint of the media where (1) the order restrained the publication of photographs of the juvenile and his family, but such photographs had already been published prior to the issuance of the gag order, (2) the order prohibited the publication of pictures of the defendant's family and the victim's family, but did not define "families," and (3) the order prohibited the publication of pictures of any juvenile entering or leaving the courts building. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000).

Membership Lists.

Order of court requiring association to produce records listing the names and addresses of officers and employees and records, files, papers, correspondence, deposit slips, canceled checks and reports, but did not require a production of the membership lists, was not void because the membership lists were privileged un-

der the provisions of the constitution. *NAACP v. State*, 229 Ark. 840, 319 S.W.2d 33 (1958), *cert. denied*, 360 U.S. 909, 79 S. Ct. 1293, 3 L. Ed. 2d 1259 (1959).

Where evidence showed that disclosure of the membership list of the local branches of the National Association for the Advancement of Colored People would significantly interfere with the freedom of association of the members, local ordinance requiring submission of membership lists to city interfered with the freedom of speech and assembly and was unconstitutional. *Bates v. City of Little Rock*, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960).

Picketing.

The right to picket is not identical with the right to freedom of speech. *Sheet Metal Workers Int'l Ass'n, Local No. 249 v. Daniels Plumbing & Heating Co.*, 223 Ark. 48, 264 S.W.2d 597 (1954).

Cited: *Rome v. Ahlert*, 231 Ark. 844, 332 S.W.2d 809 (1960); *Weston v. State*, 258 Ark. 707, 528 S.W.2d 412 (1975); *Shiras v. Britt*, 267 Ark. 97, 589 S.W.2d 18 (1979); *Eaton v. Supreme Court*, 270 Ark. 573, 607 S.W.2d 55 (1980); *Wammack v. City of Batesville*, 522 F. Supp. 1006 (E.D. Ark. 1981); *Lemmer v. Arkansas Gazette Co.*, 620 F. Supp. 1332 (E.D. Ark. 1985); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

§ 7. Jury trial — Right to — Waiver — Civil cases — Nine jurors agreeing.

The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law; and in all jury trials in civil cases, where as many as nine of the jurors agree upon a verdict, the verdict so agreed upon shall be returned as the verdict of such jury, provided, however, that where a verdict is returned by less than twelve jurors all the jurors consenting to such verdict shall sign the same. [As amended by Const. Amend. 16.]

A.C.R.C. Notes. As amended by Ark. Const. Amend. 16, Article 2, § 7 contained a second paragraph which read: "This amendment to the Constitution of Arkansas shall be self-executing and require no enabling act, but shall take and have full force and effect immediately upon its adoption by the electors of the State."

Publisher's Notes. Prior to amendment, this section read: "The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law."

RESEARCH REFERENCES

ALR. Adequacy of defense counsel's representation of criminal client regarding right to and incidents of jury trial. 3 ALR 4th 601.

Waiver, after not guilty plea, of jury trial in felony case. 9 ALR 4th 695.

Authority of state court to order jury trial in civil case where jury has been waived or not demanded by parties. 9 ALR 4th 1041.

Validity of agreement, by stipulation or waiver in state civil case, to accept verdict by number or proportion of jurors less than that constitutionally permitted. 15 ALR 4th 213.

Right of accused, in state criminal trial, to insist, over prosecutor's or court's objection, on trial by court without jury. 37 ALR 4th 304.

Waiver of jury trial as binding on later state civil trial. 48 ALR 4th 747.

Right to jury trial in child neglect, child abuse, or termination of parental rights proceedings. 102 ALR 5th 227.

Validity and application of computerized jury selection practice or procedure. 110 ALR 5th 329.

Ark. L. Rev. Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

Constitutional Law — The Six Man Jury in Federal Court, 28 Ark. L. Rev. 270.

Note, Shockley v. State: The Constitutionality of the Arkansas Habitual Offender Determination Procedure, 39 Ark. L. Rev. 553.

Note, Constitutional Law — Twelve Angry People. Arkansas Constitution Guarantees Right to Trial by Jury of Twelve Persons in Criminal Cases. Byrd v. State, 317 Ark. 609, 879 S.W.2d 435 (1994), 18 UALR L.J. 489.

State ex rel. Ohio Academy of Trial Lawyers v. Sheward: Will the Right to A Jury Trial Remain Inviolable?, 53 Ark. L. Rev. 931 (2000).

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CASE NOTES

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In general.
Construction.
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Sanity hearings.
Signatures.
Tax assessments.
Tort actions.
Waiver.

In General.

This section prevents the General Assembly from giving the Claims Commission exclusive jurisdiction of tort claims against state employees or officers for their unlawful acts. *Grimmett v. Digby*, 267 Ark. 192, 589 S.W.2d 579 (1979).

The constitutional right to trial by jury does not secure the right in all possible instances but only in those cases in which it existed when the constitution was framed; it extends only to the trial of issues of fact in civil and criminal causes.

Jones v. Reed, 267 Ark. 237, 590 S.W.2d 6 (1979).

The constitutional right to trial by jury does not secure the right in all possible instances but only in those cases that were so triable at common law. *Dunn v. Davis*, 291 Ark. 492, 725 S.W.2d 853 (1987); *McClanahan v. Gibson*, 296 Ark. 304, 756 S.W.2d 889 (1988).

Construction.

When construing this section together with ARCrP 31.2, the law is clear that the only way a defendant may waive the jury trial right is by personally making an express declaration in writing or in open court and that the record of open court proceedings where the defendant waives his or her right must be preserved. *Hill v. State*, 47 Ark. App. 44, 883 S.W.2d 857 (1994).

Abatement of Nuisance.

The legislature may dispense with jury trial in proceedings for the summary abatement of public nuisances. *Kirkland v. State*, 72 Ark. 171, 78 S.W. 770 (1904).

Administrative Orders.

The question as to reasonableness of an order of the Railroad Commission (now the Public Service Commission) is one of law for the court, and not for the jury. *Saint Louis, I.M. & S. Ry. v. State*, 99 Ark. 1, 136 S.W. 938 (1911).

The Unemployment Compensation Act providing for court review and the method of appeal is not violative of the constitutional provision for trial by jury. *McKinley v. R.L. Payne & Son Lumber Co.*, 200 Ark. 1114, 143 S.W.2d 38 (1940).

The circuit court erred in submitting the city civil service commission's order demoting police chief to a jury over appellant's objection. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943).

Appeal from County Court.

Where a jury could not have been demanded in a county court in the suit of a claim against the county, it was improper to submit the case to a jury of an appeal from the disallowance of the claim by the county court. *Hempstead County v. Hope Bridge Co.*, 132 Ark. 412, 200 S.W. 983 (1918).

Attorney's Liens.

Attorney's lien statute does not unconstitutionally deprive one of the right of

trial by jury since constitutional right of trial by jury applies only to rights that existed at common law before the adoption of the constitution and does not apply to new rights created by the legislature since the adoption of the constitution. *Henry, Walden & Davis v. Goodman*, 294 Ark. 25, 741 S.W.2d 233 (1987).

Bastardy Proceedings.

There is no constitutional right to a jury trial in bastardy cases, therefore, the provisions of § 9-10-106 (repealed) providing that trials in bastardy proceedings in circuit court be conducted without a jury, are constitutional. *Dunn v. Davis*, 291 Ark. 492, 725 S.W.2d 853 (1987).

Closing Argument.

The prosecutor's expressions, characterizing defendant as a mad dog, an escape risk, a threat to the jurors' safety if the death sentence was not imposed, and implying that a life sentence, in effect, would require taxpayers to underwrite huge costs and would constitute an improper compromise and violation of the jurors' oath, implicated defendant's Eighth Amendment right by not only minimizing the jury's duty and responsibility, but injecting irrelevant factors into the jury's decision-making responsibility. *Miller v. Lockhart*, 861 F. Supp. 1425 (E.D. Ark. 1994), *aff'd*, 65 F.3d 676 (8th Cir. 1995).

Conflict of Laws.

The employee of a Louisiana corporation, injured in Arkansas and a resident of the state at the time of his injury, is not required to accept compensation for his injuries under the Louisiana act, since he would be deprived of his right to trial by jury under the Arkansas Constitution by the extra-territorial effect of the Louisiana act. *Haynes Drilling Corp. v. Smith*, 200 Ark. 1098, 143 S.W.2d 27 (1940).

Under this section and ARCrP 31.1 and ARCrP 31.2, a defendant charged under § 5-65-205 has the right to a jury trial, and to the extent that § 5-65-205(c) prevents a defendant from having a jury determination, it is unconstitutional. *Medlock v. State*, 328 Ark. 229, 942 S.W.2d 861 (1997).

Contempt.

A party is not entitled to trial by jury in contempt proceedings. *Neel v. State*, 9

Ark. 259 (1849) (decision under prior Constitution).

Court Rules.

The bifurcation of a personal injury trial, pursuant to ARCP 42, on the issues of liability and damages does not deprive the plaintiffs of their right to a jury trial. *Hunter v. McDaniel Constr. Co.*, 274 Ark. 178, 623 S.W.2d 196 (1981).

The Constitution is not violated by ARCP 38, governing jury trial of right. *Venable v. Becker*, 287 Ark. 236, 697 S.W.2d 903 (1985).

The procedure for waiver of a jury in a criminal matter is set out in ARCrP 31.2. *Burton v. State*, 327 Ark. 65, 937 S.W.2d 634 (1997).

Directed Verdict.

Direction of verdict when the evidence is undisputed and unimpeached does not deny right to trial by jury. *Darden v. State*, 80 Ark. 295, 97 S.W. 449 (1906); *Roberts v. State*, 84 Ark. 564, 106 S.W. 952 (1907).

Where plaintiff in action on promissory note moved for directed verdict and court denied the motion, whereupon defendant also moved for a directed verdict, the trial court erred in taking the case away from the jury and deciding it in favor of plaintiff. *Bussey v. Bank of Malvern*, 270 Ark. 37, 603 S.W.2d 426 (1980).

Election Contest.

Legislature may dispense with jury trial in case of contested elections. *Govan v. Jackson*, 32 Ark. 553 (1877); *Wise v. Martin*, 36 Ark. 305 (1880); *Wheat v. Smith*, 50 Ark. 266, 7 S.W. 161 (1887).

Although there was no common law right to a jury trial in usurpation-of-office cases where the plaintiff merely requested ouster of the alleged usurper, plaintiff has a constitutional right under this section to a jury trial if he also made a claim for fees or emoluments. *Hopper v. Garner*, 328 Ark. 516, 944 S.W.2d 540 (1997).

Equity.

Submission of an issue of fact to jury in chancery jurisdiction is a matter within discretion of the chancellor. *State v. Churchill*, 48 Ark. 426, 3 S.W. 352 (1886).

The right of trial by jury extends to all cases in which legal rights are to be ascertained and determined in contradistinction to those where equitable rights alone were recognized and equitable remedies

administered. *Ashley v. City of Little Rock*, 56 Ark. 391, 19 S.W. 1058 (1892).

Since the chancery court had jurisdiction, the appellant's argument concerning his right to a jury trial was without merit. *Priddy v. Mayer Aviation, Inc.*, 260 Ark. 3, 537 S.W.2d 370 (1976).

The clean-up doctrine, which allows the equity court, once it has properly acquired jurisdiction, to decide law issues incidental to, or essential to, the determination of the equitable issues, does not violate this section. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986), cert. denied, 481 U.S. 1069, 107 S.Ct. 2462, 95 L. Ed. 2d 871 (1987).

The plaintiff was not entitled to a jury trial in his unlawful detainer action as, when he interposed a claim for specific performance, the circuit court properly transferred the case to equity. *Mitchell v. House*, 71 Ark. App. 19, 26 S.W.3d 586 (2000).

Legal Issues.

Where issues are purely legal, the parties are entitled by constitutional right to trial by jury. *Weaver v. Arkansas Nat'l Bank*, 73 Ark. 462, 84 S.W. 510 (1904).

Local Option.

Proceeding under local option law is not a case for a jury trial. *Williams v. Citizens*, 40 Ark. 290 (1883).

Municipal Court.

There is no right to a jury trial in municipal court, except the right remains inviolate when pursued on appeal to circuit court. *Edwards v. City of Conway*, 300 Ark. 135, 777 S.W.2d 583 (1989).

Number of Jurors.

In misdemeanors, by agreement of parties, a defendant may be tried by less than twelve jurors. *Warwick v. State*, 47 Ark. 568, 2 S.W. 335 (1886).

The jury must consist of twelve jurors unless the legal number is waived. *Western Union Tel. Co. v. Philbrick*, 189 Ark. 1082, 76 S.W.2d 97 (1934).

Where motion to dismiss appeal, treated as certiorari, brought up the original verdict signed by nine of the jurors, judgment was affirmed though judgment as presented by appellant, copied in the face of the judgment, showed that it was signed by only eight jurors. *Cartwright v. Barnett*, 192 Ark. 206, 90 S.W.2d 485 (1936).

It is not error on a charge of manslaughter to be tried by a jury of eleven men where appellant not only agreed in open court to a jury of eleven, but made no objections, saved no exceptions, and did not assign this as error in his motion for a new trial. *Ford v. State*, 222 Ark. 16, 257 S.W.2d 30 (1953).

Where a case was submitted to the jury on interrogatories and the answer to one was signed by eight jurors and one other as "foreman," the word "foreman" following the signature of such party was mere surplusage and the foreman would not be required to sign again on the assumption that he had signed merely as foreman; the answer was therefore signed by necessary nine jurors. *Sullivan v. Fanestiel*, 229 Ark. 662, 317 S.W.2d 713 (1958).

The answer to each interrogatory in special verdicts is to be considered as a separate verdict on that particular issue of fact, and where as many as any nine of the jurors agree upon the finding as to the particular fact in issue, such agreement constitutes the verdict of the jury on such issue. *McChristian v. Hooten*, 245 Ark. 1045, 436 S.W.2d 844 (1969).

This section requires that at least nine jurors sign a verdict if it is less than unanimous; if it is unanimous, only the foreman must sign. *Center v. Johnson*, 295 Ark. 522, 750 S.W.2d 396 (1988).

Defendant was deprived of her right to be tried by a twelve-member jury for charges of disorderly conduct and refusal to submit to arrest because she was tried by a jury composed of only six members. *Grinning v. City of Pine Bluff*, 322 Ark. 45, 907 S.W.2d 690 (1995).

Probate.

A trial by jury, in the probate court, of exceptions to an account, is not contemplated by law. *Crow v. Reed*, 38 Ark. 482 (1882).

By statute, a claimant against the estate of a decedent is entitled to a jury trial. *Chipman v. Perdue*, 135 Ark. 559, 205 S.W. 892 (1918).

Property Title Actions.

A party in possession, claiming title adversely, is entitled to have his claim tried at law by jury. *Ashley v. City of Little Rock*, 56 Ark. 391, 19 S.W. 1058 (1892).

The constitutional right to a jury trial is limited to those cases which were so tri-

able at common law; thus, a defendant in a mortgage foreclosure proceeding did not have a right to a jury trial at common law. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986), cert. denied, 481 U.S. 1069, 107 S. Ct. 2462, 95 L. Ed. 2d 871 (1987).

Punishment.

Statutes permitting the court to fix the punishment under certain circumstances are not unconstitutional. *Froman v. State*, 232 Ark. 697, 339 S.W.2d 601 (1960).

This section and Ark. Const., Art. 2, §§ 10 and 21 are not to be interpreted to prevent a court from fixing punishment in certain cases. *Tharp v. State*, 294 Ark. 615, 745 S.W.2d 612 (1988).

Questions of Fact.

Where the amount to be recovered by the plaintiff is a disputed question of fact, it is the exclusive province of the jury to determine it, as the court cannot substitute its judgment for that of the jury upon a disputed question of fact. *Womack v. Brickell*, 232 Ark. 385, 337 S.W.2d 655 (1960).

Quo Warranto and Mandamus.

The proceedings of quo warranto and mandamus are civil proceedings against a public officer and the right to trial by jury does extend to such proceedings. *State v. Johnson*, 26 Ark. 281 (1870) (decision under former Constitution).

Recovery of Money.

A defendant attorney is entitled to a jury trial in statutory summary proceeding by a client to recover money received by the attorney. *Davies & Davies v. Patterson*, 132 Ark. 484, 201 S.W. 504 (1917).

Replevin.

Defendant, in replevin action for two mules, is entitled to trial by jury regardless of the amount involved. *Stark v. Couch*, 109 Ark. 534, 160 S.W. 853 (1913).

Sanity Hearings.

Constitution does not guarantee trial by jury in sanity hearing, as trial by jury was not required in sanity hearings at common law. *Scherz v. Peoples Nat'l Bank*, 214 Ark. 796, 218 S.W.2d 86 (1949).

Signatures.

Failure of juror to sign the verdict form must be objected to at trial to preserve the

issue for appeal. *Carroll Elec. Coop. Corp. v. Carlton*, 319 Ark. 555, 892 S.W.2d 496 (1995).

Finding in favor of the spouse that a pharmacist incorrectly filled the decedent's prescription resulting in his death was proper where the supreme court declined to infer that merely because the verdict was signed by 9 of 12 jurors, it was given under the influence of passion or prejudice. *Wal-Mart Stores, Inc. v. Tucker*, 353 Ark. 730, 120 S.W.3d 61 (2003).

Tax Assessments.

A statutory appeal by a property owner from an assessment is not entitled to be heard by a jury. *Missouri Pac. R.R. v. Conway County Bridge Dist.*, 134 Ark. 292, 204 S.W. 630 (1918).

Tort Actions.

In a tort case in circuit court, there is a right to trial by jury regardless of the amount in controversy. *McClanahan v. Gibson*, 296 Ark. 304, 756 S.W.2d 889 (1988).

While § 16-17-704(a)(6) [now § 16-17-704(a)(4)] does provide for the concurrent jurisdiction, nothing in Acts 1987, No. 431 suggests an intent by the legislature to abrogate the constitutional right to a trial by jury in tort actions triable in circuit court. To the contrary, § 16-17-703, which deals with appeals from municipal court, clearly demonstrates the legislature's concern that the right secured by this section of the constitution not be diminished. *McClanahan v. Gibson*, 296 Ark. 304, 756 S.W.2d 889 (1988).

Waiver.

Defendant claiming actual possession waives constitutional right to have issue of possession tried by jury by going to trial without demand of jury in suit in equity to remove a cloud upon title. *Love v. Bryson*, 57 Ark. 589, 22 S.W. 341 (1893).

Statutory provision that failure to appear and defend constituted a waiver of the right to a trial by jury was not a denial to defendant of his right to a trial by jury; this provision of the Constitution investing in the legislature the authority to determine what acts on the part of a litigant constituted a waiver of the right to a jury trial. *Mode v. Barnett*, 235 Ark. 641, 361 S.W.2d 525 (1962).

Constitution grants the right to trial by jury, but it also provides that a jury trial

may be waived by the parties in all cases in the manner prescribed by law. *Moore v. State*, 241 Ark. 335, 407 S.W.2d 744 (1966).

It was not an abuse of discretion by the court to refuse on the day of trial to permit the withdrawal of a waiver of jury trial made some six months before. *Scates v. State*, 244 Ark. 333, 424 S.W.2d 876 (1968).

The use of the words "sentencing court" in an act was intended to refer either to the judge or the jury, and the factual issue of the use of a firearm is to be determined by the jury unless a jury has been waived; therefore, the section does not contravene the constitutional right to a trial by jury. *Redding v. State*, 254 Ark. 317, 493 S.W.2d 116 (1973).

Plaintiff was not deprived of a jury trial where she authorized her attorney to settle suit arising out of an automobile collision, but attempted to change her mind after the case was removed from the trial docket, since she waived a formal trial by authorizing the settlement. *Veasey v. Joshlin*, 257 Ark. 422, 516 S.W.2d 596 (1974).

Where both parties had agreed to a nonjury trial at a pretrial conference, and about two months later and about one month prior to trial defendant sought a jury trial to which plaintiff objected, the trial court did not abuse its discretion in denying a jury. *Housing Auth. v. E.W. Johnson Constr. Co.*, 264 Ark. 523, 573 S.W.2d 316 (1978).

Procedural rules governing jury trials are not intended to diminish the right to a jury trial and should be interpreted so as not to give effect to dubious waivers of rights. *Bussey v. Bank of Malvern*, 270 Ark. 37, 603 S.W.2d 426 (Ct. App. 1980).

Where the defendant was never made aware either by the trial court or his attorney that the choice confronting him was, on the one hand, to be tried by jury of his peers or, on the other hand, to have his guilt or innocence determined by the judge, the defendant was deprived of sufficient information to make a knowing and intelligent waiver of the right to a jury trial. *Williamson v. Lockhart*, 636 F. Supp. 1298 (E.D. Ark. 1986).

Presuming waiver of right to a jury trial from a silent record is impermissible; the record must demonstrate or evidence disclose that a defendant knowingly, intelli-

gently, and understandingly waived his or her right to a jury trial and anything less is not waiver. *Williamson v. Lockhart*, 636 F. Supp. 1298 (E.D. Ark. 1986).

The trial court complied with this section by setting defendant's case for trial by jury even though defendant failed to appear at trial and, therefore, was precluded from exercising that right. *Rischar v. State*, 307 Ark. 429, 821 S.W.2d 25 (1991).

The Constitution expresses the only manner in which the right to a jury trial can be lost, that is, by waiver, and waiver is an intentional relinquishment of a known right; therefore, the constitutional right to a jury trial cannot be lost by forfeiture, it can only be waived. *Calnan v. State*, 310 Ark. 744, 841 S.W.2d 593 (1992).

The State Constitution and Rules of Criminal Procedure assume a defendant will be tried by a jury unless that right is expressly waived, and the law providing the manner of waiver is designed to assure that the jury trial right is not forfeited by inaction on the part of a defendant. *Calnan v. State*, 310 Ark. 744, 841 S.W.2d 593 (1992).

The language of ARCrP 31.3 that allows the defendant's attorney to waive a jury trial is consistent with § 16-89-103, which states that a defendant's presence is not required in misdemeanor cases. *Bolt v. State*, 314 Ark. 387, 862 S.W.2d 841 (1993).

Where defendant's counsel stated in open court, on the record, and in defendant's presence, that defendant waived a jury trial and specifically asked the trial court to hear the case, the defendant "personally" waived a jury trial in compliance with ARCrP 31.2 and this section. *Bolt v. State*, 314 Ark. 387, 862 S.W.2d 841 (1993).

The "manner prescribed by law" for waiver is set out in ARCrP 31.1 through 31.3. *Reaser v. State*, 47 Ark. App. 7, 883 S.W.2d 851 (1994).

Defendant's failure to respond to a notice of trial setting, which advised that the court was to be notified 48 hours in advance if a jury trial was requested, did not constitute a waiver of a jury trial. *Reaser v. State*, 47 Ark. App. 7, 883 S.W.2d 851 (1994).

Waiver of jury trial in judge's chambers satisfied the "open court" requirement of

ARCrP 31.2 where defendant requested a hearing in the judge's chambers because defendant did not want the jury panel to overhear, and thus be prejudiced by, defendant's statements regarding his reluctance to have his case tried to a jury; once in chambers, defendant made it absolutely clear that he wished to have his case tried to the circuit judge and not the jury because he feared a jury would "automatically" conclude he was guilty and "railroad" him, and, after the trial court admonished defendant that he was "giving up one of the most precious rights that anybody has in this country," defendant concluded that he wanted to take his chances with the trial judge. *Burton v. State*, 327 Ark. 65, 937 S.W.2d 634 (1997).

Defendant did not waive her right to a jury trial by signing an "Acknowledgment" document in which defendant stated that she had been advised by counsel that it would be in her best interest to accept the plea bargain agreement, but had declined to do so, and that she wished to go forward with her right to a bench trial; the "Acknowledgment" was obviously not prepared for the express purpose of waiving a jury trial and contained too casual a reference to constitute an express, knowing, intelligent, and voluntary waiver of such a fundamental and important constitutional right. *McCoy v. State*, 60 Ark. App. 306, 962 S.W.2d 822 (1998).

Where there was no evidence that defendant was informed by the court of his right to be tried by a jury or that he executed a knowing, voluntary, and intelligent waiver of his rights, defendant was deprived of his constitutional right to a trial by jury. *Davis v. State*, 81 Ark. App. 17, 97 S.W.3d 921 (2003).

Cited: *Cairo & Fulton R.R. v. Trout*, 32 Ark. 17 (1877); *First Nat'l Bank v. Reinman*, 93 Ark. 376, 125 S.W. 443 (1910); *Minnequa Cooperage Co. v. Hendricks*, 130 Ark. 264, 197 S.W. 280 (1917); *Davis v. H.A. Nelson & Son*, 132 Ark. 436, 201 S.W. 511 (1918); *Wells Fargo & Co. Express v. Alexander*, 133 Ark. 600, 199 S.W. 84 (1918); *Montgomery County v. Cearley*, 192 Ark. 868, 95 S.W.2d 554 (1936); *Mitchell v. State*, 229 Ark. 469, 317 S.W.2d 1 (1958), cert. denied, 360 U.S. 913, 79 S. Ct. 1299, 3 L. Ed. 2d 1962 (1959); *Rome v. Ahlert*, 231 Ark. 844, 332 S.W.2d 809 (1960); *Froman v. State*, 232

Ark. 697, 339 S.W.2d 601 (1960); Harrell v. City of Conway, 296 Ark. 247, 753 S.W.2d 542 (1988); Elmore v. State, 305 Ark. 426, 809 S.W.2d 370 (1991); State v. Roberts, 321 Ark. 31, 900 S.W.2d 175 (1995); Cook v. State, 321 Ark. 641, 906 S.W.2d 681 (1995); State v. Webb, 323 Ark. 80, 913 S.W.2d 259 (1996); Granquist v. Randolph,

326 Ark. 809, 934 S.W.2d 224 (1996); Murdock v. Slater, 326 Ark. 1067, 935 S.W.2d 540 (1996); Johnson v. State, 328 Ark. 526, 944 S.W.2d 115 (1997); SEECO, Inc. v. Hales, 330 Ark. 402, 954 S.W.2d 234 (1997); Advocat, Inc. v. Sauer, 353 Ark. 29, 111 S.W.3d 346 (2003).

§ 8. Criminal charges — Self-incrimination — Due process — Double jeopardy — Bail.

No person shall be held to answer a criminal charge unless on the presentment or indictment of a grand jury, except in cases of impeachment or cases such as the General Assembly shall make cognizable by justices of the peace, and courts of similar jurisdiction; or cases arising in the army and navy of the United States; or in the militia, when in actual service in time of war or public danger; and no person, for the same offense, shall be twice put in jeopardy of life or liberty; but if, in any criminal prosecution, the jury be divided in opinion, the court before which the trial shall be had, may, in its discretion, discharge the jury, and commit or bail the accused for trial, at the same or the next term of said court; nor shall any person be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Cross References. Prosecution by indictment or information, Ark. Const. Amend. 21, § 1.

RESEARCH REFERENCES

ALR. Propriety of requiring criminal defendant to exhibit self, or perform physical act, or participate in demonstration, during trial and in presence of jury. 3 ALR 4th 374.

Propriety of court's dismissing indictment or prosecution because of failure of jury to agree after successive trials. 4 ALR 4th 1274.

Conviction or acquittal in federal court as bar to prosecution in state court for state offense based on same facts. 6 ALR 4th 802.

Admissibility in criminal case of blood alcohol test where blood was taken despite defendant's objection or refusal to submit to test. 14 ALR 4th 690.

Retrial on greater offense following reversal of plea-based conviction of lesser offense. 14 ALR 4th 970.

What constitutes "manifest necessity" for prosecutor's dismissal of action, allowing subsequent trial despite jeopardy's having attached. 14 ALR 4th 1014.

Propriety and prejudicial effect of prosecution's calling as witness, to extract claim of self-incrimination privilege, one involved in offense charged against accused. 19 ALR 4th 368.

Validity and application of statute authorizing forfeiture of use or closure of real property from which obscene materials have been disseminated or exhibited. 25 ALR 4th 395.

Contempt finding as precluding substantive criminal charges relating to same transaction. 26 ALR 4th 950.

Admissibility in criminal case of evidence that accused refused to take blood tests. 26 ALR 4th 1112.

Right of defendant to bail pending appeal from conviction. 28 ALR 4th 227.

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Failure to object to improper questions or comments as to defendant's pretrial silence or failure to testify as constituting waiver of right to complain of error — modern cases. 32 ALR 4th 774.

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Failure of state prosecutor to disclose fingerprint evidence as violating due process. 94 ALR 5th 393.

Failure of state prosecutor to disclose exculpatory ballistic evidence as violating due process. 95 ALR 5th 611.

Sufficiency of showing that voluntariness of confession or admission was affected by alcohol or other drugs — Drugs or narcotics administered as part of medical treatment and drugs or intoxicants administered by the police. 96 ALR 5th 523.

Conviction or acquittal in federal court as bar to prosecution in state court for state offense based on same facts — Modern view. 97 ALR 5th 201.

Application of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) and *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d

556 (2002) to state death penalty proceedings. 110 ALR 5th 1.

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 890 et seq.

Ark. L. Notes. Malone, The Availability of a First Appearance and Preliminary Hearing, 1983 Ark. L. Notes 41.

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Criminal Law — Multiple Punishment Resulting from a Single Course of Criminal Conduct, 25 Ark. L. Rev. 181.

Creditors' Provisional Remedies and Debtors' Due Process Rights: Statutory Liens in Arkansas, 32 Ark. L. Rev. 185.

Farrow, New Jersey v. Portash: The Scope of Testimonial Immunity, 34 Ark. L. Rev. 306.

Note, Missouri v. Hunter and the Legislature: Double Punishment Without Double Jeopardy, 37 Ark. L. Rev. 1000.

Gingerich, The Arkansas Grand Jury, etc., 40 Ark. L. Rev. 54.

Case Notes, Wilson v State: Narrowing the Standard for Mistrial, 41 Ark. L. Rev. 141.

Case Note, United States v. Salerno: The Validation of Preventive Detention and the Denial of a Presumed Constitutional Right to Bail, 41 Ark. L. Rev. 697.

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UALR L.J. Jans, Survey of Constitutional Law, 3 UALR L.J. 184.

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Note, Constitutional Law — Due Process — Arkansas' Sunday Closing Law Is Declared Unconstitutionally Vague, 6 UALR L.J. 305.

Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

CASE NOTES

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Bail.**—Appellate Review.**

Determination on application for bail will not be disturbed unless trial court abused its discretion. *Fikes v. State*, 221 Ark. 81, 251 S.W.2d 1014 (1952).

—Capital Cases.

The offense of accessory before the fact to murder is a capital offense and is not bailable where the proof is evident or the presumption great. *State ex rel. Att'y Gen. v. Williams*, 97 Ark. 243, 133 S.W. 1017 (1911).

The Supreme Court will not disturb an order denying bail in a capital case unless there has been an abuse of discretion or the trial court appears to have acted arbitrarily. *Parnell v. State*, 203 Ark. 652, 176 S.W.2d 902 (1942); *Green v. State*, 52 Ark. App. 244, 917 S.W.2d 171 (1996).

There was no invidious discrimination where capital offender was held without bail for a valid state purpose and no discrimination was shown against a category of persons. *Smith v. State*, 256 Ark. 425, 508 S.W.2d 54 (1974).

In a capital case, the state must assume the burden of proving that bail should be denied because the proof is evident or the presumption great. *Renton v. State*, 265 Ark. 223, 577 S.W.2d 594 (1979).

Since the prior conviction of defendant for a capital offense would satisfy the requirement of this section that the "proof is evident" or that the "presumption is great," court's order granting a stay pending appeal did not deprive defendant of any legally compelling cognizable right to be released on bail pending a new trial. *Grigsby v. Mabry*, 583 F. Supp. 629 (E.D. Ark. 1983).

A charge of capital murder does not automatically obviate the possibility of the accused being freed on bond. *Buchanan v. State*, 315 Ark. 227, 866 S.W.2d 395 (1993).

The state bears the burden of showing "the proof is evident or the presumption great," and the mere fact that capital murder has been charged does not mean the offense is non-bailable. *Buchanan v. State*, 315 Ark. 227, 866 S.W.2d 395 (1993).

—Insanity.

It was reversible error for a trial court hearing a motion for a new trial to tell the defendant that, if she took the stand to testify as to her insanity, it would immediately send her to the state hospital and not consider bail in the absence of evidence she was a menace to anyone. *Kozal v. State*, 264 Ark. 587, 573 S.W.2d 323 (1978).

—Money Bail.

In view of mandate that money bail should be used only as a last resort to ensure the court appearance of an accused, the circuit court erred in refusing to require the municipal court to make a determination that no other condition would ensure accused's court appearance before setting money bail. *Thomas v. State*, 260 Ark. 512, 542 S.W.2d 284 (1976).

—Right to Bail.

A rule permitting the trial court to revoke bail upon a finding of reasonable cause to believe that the defendant has committed a felony while released pending adjudication of a prior charge would not preclude the trial court from setting a new and reasonable bail with appropriate

terms and restrictions. *Reeves v. State*, 261 Ark. 384, 548 S.W.2d 822 (1977).

This section confers an absolute right before conviction, except in capital cases, to a reasonable bail. *Duncan v. State*, 308 Ark. 205, 823 S.W.2d 886 (1992).

A deferred guilty plea to a felony may be taken into consideration in fixing the amount and conditions of bail; however, the defendant cannot be denied release on bail as a matter of law because of the plea. *Duncan v. State*, 308 Ark. 205, 823 S.W.2d 886 (1992).

Although a mental examination provided a basis for setting stringent conditions on release of defendant charged with attempted murder and aggravated assault, it did not give the judge the option of refusing to release him from incarceration. *Henley v. Taylor*, 324 Ark. 114, 918 S.W.2d 713 (1996).

Double Jeopardy.

—Appeal.

If the district court finds a defendant has failed to make a colorable showing of previous jeopardy and threat of repeated jeopardy, the filing of a notice of appeal from the denial of the double jeopardy motion does not divest the district court of jurisdiction. *United States v. Brown*, 926 F.2d 779 (8th Cir. 1991).

—Assault.

A conviction of an aggravated assault is a bar to an indictment for assault with intent to kill for the same offense since both crimes put the defendant in jeopardy of life or liberty. *State v. Smith*, 53 Ark. 24, 13 S.W. 391 (1890).

A conviction of the crime of simple assault is not an acquittal of the offense of aggravated assault and does not bar an indictment and conviction of the latter crime where that crime was not charged under the first conviction. *May v. State*, 110 Ark. 432, 162 S.W. 43 (1913).

Where defendant was convicted in municipal court for a battery against a state trooper but the trial in circuit court was for an alleged assault upon a different officer at an earlier time and a different place, the defendant was not placed in double jeopardy. *Breeden v. State*, 270 Ark. 90, 603 S.W.2d 459 (1980).

Where the prosecutor's reference to the fact that the defendant had been drinking was indirect and brief, the State did not

use the defendant's conduct of operating a motor vehicle in an intoxicated condition to prove the assault charge; therefore, the State did not establish an essential element of the assault offense by proving conduct constituting an offense for which the defendant had already been prosecuted and the defendant was not placed in double jeopardy. *Kaspar v. State*, 41 Ark. App. 158, 852 S.W.2d 141 (1993).

—Child Custody Violation.

Defendant father, found guilty of contempt for failure to timely return child to mother's custody, could not also be convicted of a violation of § 5-26-502 for the same offense. *Hobbs v. State*, 43 Ark. App. 149, 862 S.W.2d 285 (1993).

—City Ordinance and State Law.

A conviction of an offense in a mayor's court bars a conviction of the same offense in a circuit court, although one is prosecuted for violation of a city ordinance and the other for violation of a state law. *Champion v. State*, 110 Ark. 44, 160 S.W. 878 (1913).

—Civil Proceedings.

Language in contempt order that court would consider remitting part of the monetary fine and jail sentence upon proper application by the defendant established the intent of the order as being coercive and thus civil in nature; accordingly, subsequent prosecution of defendant for interference with custody did not place him in double jeopardy for the same offense. *Baggett v. State*, 15 Ark. App. 113, 690 S.W.2d 362 (1985).

A civil commitment for evaluation and treatment does not meet the test of prior punishment for a criminal offense even when the precipitating event for the commitment is criminal. *Edwards v. State*, 328 Ark. 394, 943 S.W.2d 600 (1997), cert. denied, 522 U.S. 950, 118 S. Ct. 370, 139 L. Ed. 2d 288 (1997).

—Continuing Criminal Enterprise.

Simultaneous conviction and sentence for continuing criminal enterprise and its predicate felony offenses do not violate the protection against multiple punishments for the same offense afforded by the federal constitutional double jeopardy clauses, U.S. Const. Amend. 5, and this section. *Moore v. State*, 321 Ark. 249, 903 S.W.2d 154 (1995).

—Criminal Insanity.

Constitutional prohibition against double jeopardy is not violated by statute which permits trial court to declare mistrial if issue of insanity is raised after the trial is begun. *Cody v. State*, 237 Ark. 15, 371 S.W.2d 143 (1963).

—Directed Verdict.

Where the jury has acquitted a defendant of a crime punishable by a fine or imprisonment, it is a violation of the jeopardy clause for the judge to set aside the verdict and direct a verdict for a fine or for imprisonment. *Roberts v. State*, 84 Ark. 564, 106 S.W. 952 (1907).

Double jeopardy was not offended when the charge in the information filed against defendant was dismissed by directed verdict, but the prosecutor was allowed to amend the information to charge a lesser included offense, of which defendant was convicted, all occurring in the same trial. *Hughes v. State*, 347 Ark. 696, 66 S.W.3d 645 (2002).

—Discharge of Jury.

Although discharge of jury normally operates as an acquittal to bar a second trial for the same offense, discharge of a juror after the jury is selected and substitution of another juror is not former jeopardy. *Martin v. State*, 163 Ark. 103, 259 S.W. 6 (1924).

When the jury is finally sworn to try the case, jeopardy has attached to the accused and when, without the consent of the defendant, expressed or implied, the jury is discharged before the case is completed, then the constitutional right against double jeopardy may be invoked. *Jones v. State*, 230 Ark. 18, 320 S.W.2d 645 (1959).

When the jury is finally sworn to try the case, jeopardy has attached to the accused, and when, without the consent of the defendant, expressed or implied, the jury is discharged before the case is completed, then the constitutional right against double jeopardy may be invoked, except in cases of overruling necessity. *Wilson v. State*, 289 Ark. 141, 712 S.W.2d 654 (1986).

Since a jury was never sworn to hear defendant's case, double jeopardy did not attach and the trial court did not err in denying the motion to dismiss the charge on such grounds. *Smith v. State*, 307 Ark. 542, 821 S.W.2d 774 (1992).

The manifest necessity permitting the discharge of a jury without rendering a verdict and without justifying a plea of double jeopardy may arise from various causes or circumstances; however, the circumstances must be forceful and compelling, and must be in the nature of a cause or emergency over which neither court nor attorney has control or which could not have been averted by diligence and care. *Green v. State*, 52 Ark. App. 244, 917 S.W.2d 171 (1996).

—Dismissal.

An erroneous dismissal, for variance, of an indictment after the jury was sworn and testimony taken, bars a subsequent prosecution for the same offense. *Johnson v. State*, 199 Ark. 196, 133 S.W.2d 15 (1939).

—Felonies.

An acquittal of a felony by a directed verdict bars a second trial for the same offense. *State v. Gray*, 160 Ark. 580, 255 S.W. 304 (1923).

—Fraud.

On appeal from an acquittal of defendant accused of charge of defrauding bank, the Supreme Court can not reverse since the crime was punishable by imprisonment. *State v. Boatright*, 192 Ark. 1100, 96 S.W.2d 775 (1936).

—Homicide.

A conviction of second degree murder, where prosecution under indictment was for first degree murder, is acquittal of higher crime and the defendant cannot again be tried for first degree murder. *Johnson v. State*, 29 Ark. 31 (1874).

Where three persons were killed as the result of being struck by a car driven by the defendant, and the defendant was charged in three separate informations with involuntary manslaughter for driving his car in a reckless, wanton, and wilful disregard of safety of other persons, and is tried and convicted for killing of one of the persons, he can still be tried for killing of second person, despite plea of double jeopardy. *Holder v. Fraser*, 215 Ark. 67, 219 S.W.2d 625 (1949).

Where defendant by successive shots kills two persons and is tried for killing of one person, he can still be tried again for killing of second person, as killings were accompanied by separate intents, regard-

less of whether killing was by one act or several acts. *Holder v. Fraser*, 215 Ark. 67, 219 S.W.2d 625 (1949).

The collateral estoppel effect attributed to the double jeopardy clause did not prevent the state from charging the defendant with second-degree murder and the lesser-included offense of manslaughter where she had already been convicted of abuse of an adult, which required a lower culpable mental state than second-degree murder, since the elements of the subsequent offense were not the same as the elements involved in the offense for which she was already convicted. *State v. Thompson*, 343 Ark. 135, 34 S.W.3d 33 (2000).

—Larceny.

Where a trial resulted in a conviction of larceny of part of the articles covered in an indictment, and a new trial resulted in a quashing of the indictment, a second indictment can not try defendant on the articles included in the first indictment on which defendant was acquitted. *State v. Clark*, 32 Ark. 231 (1877).

If a thief steals two objects at the same time and is convicted of stealing one object, he cannot later be tried for theft of second object and plea of double jeopardy is good. *Holder v. Fraser*, 215 Ark. 67, 219 S.W.2d 625 (1949).

The offenses of aggravated robbery and theft of property are separate and distinct and not dependent upon the same evidence to support the convictions; accordingly, defendant's conviction on both charges did not subject him to double jeopardy. *Higgins v. State*, 270 Ark. 19, 603 S.W.2d 401 (1980).

—Libel.

A judgment for accused in prosecution for criminal libel bars future prosecution for same offense as the crime is punishable by imprisonment. *State v. Smith*, 94 Ark. 368, 126 S.W. 1057 (1910).

—Misdemeanors.

Because of the nature of the offense, a person indicted for a misdemeanor punishable only by fine, and acquitted thereof, may be tried again for the same offense where the judgment is reversed and remanded on appeal or writ of error. *Jones v. State*, 15 Ark. 261 (1854) (decision under prior Constitution).

—Mistrial.

Where the record reflects neither a plea of insanity nor a single line of evidence to suggest appellant was insane, trial court's declaration of a mistrial in order that defendant and a co-defendant be committed for observation entitled defendant to have charges against him dismissed on ground of double jeopardy. *Cody v. State*, 237 Ark. 15, 371 S.W.2d 143 (1963).

Where the defense counsel in his opening statement made reference to plea bargaining and sentencing recommended by prosecuting attorney, such remarks being prejudicial, the trial court properly granted mistrial and thus defendant's constitutional rights as to double jeopardy were not violated by his retrial. *Haight v. State*, 259 Ark. 478, 533 S.W.2d 510 (1976).

Where the defendant's attorney requested a mistrial, which was granted, and the defendant, after the jury had been discharged, asked that a mistrial not be declared, the denial of such request did not subject the defendant to double jeopardy. *Walker v. State*, 262 Ark. 331, 556 S.W.2d 655 (1977).

Where the evidence presented in a prosecution for theft of property was sufficient as a matter of law to support a conviction, but a mistrial was declared after the jury reported that it was hopelessly deadlocked, it would not constitute double jeopardy to permit a retrial for the theft of property. *Beard v. State*, 277 Ark. 35, 639 S.W.2d 52 (1982).

Where the prosecutor had become ill and could not continue with the prosecution of defendant's trial and subsequently a conflict with one of the jurors was revealed, it was manifestly necessary for the court to order a mistrial, and the trial court did not err in ruling that defendant's second trial was not barred by double jeopardy. *Green v. State*, 52 Ark. App. 244, 917 S.W.2d 171 (1996).

Because defense counsel's remark in his opening statement that the alleged victim had claimed to swallow bleach in an attempt to gain attention was ultimately admissible, a mistrial should not have been granted and the second trial therefore constituted double jeopardy. *Jaynes v. State*, 66 Ark. App. 43, 987 S.W.2d 751 (1999).

—Multiple Offenses.

The prosecution of only one count of an

indictment containing three counts and conviction of that one does not bar subsequent conviction on other counts. *Grayson v. State*, 92 Ark. 413, 123 S.W. 388 (1909).

Where defendant pulled a gun on police officer and told the officer to hand over his pistol, there was no violation of the double jeopardy clause by trying the defendant on a robbery charge after he had previously pleaded guilty to the charge of drawing a weapon on an officer. *Decker v. State*, 251 Ark. 28, 471 S.W.2d 343 (1971).

The acquittal of a defendant on a charge of wilful murder in the course of an armed robbery where the facts reflected that the jury could not have found defendant present at the crime scene without having been obligated to find him guilty of murder, even if it believed he did not actually fire the fatal shot, prevented a subsequent trial of the defendant on a charge of armed robbery arising from the same set of facts under the constitutional guarantees against double jeopardy. *Turner v. Arkansas*, 407 U.S. 366, 92 S. Ct. 2096, 32 L. Ed. 2d 798 (1972).

Where offenses of robbery and larceny arose out of same criminal act, appellant's trial on larceny charge after his acquittal on robbery charge did not place him in double jeopardy. *Polk v. State*, 252 Ark. 320, 478 S.W.2d 738 (1972).

Where defendant robbed service station and then stole customer's car, there was no violation of the double jeopardy clause by trying the two offenses separately. *Decker v. State*, 255 Ark. 138, 499 S.W.2d 612 (1973).

Convictions for rape and attempted first degree murder did not violate the double jeopardy clause. *Wiman v. Lockhart*, 797 F.2d 666 (8th Cir. 1986), cert. denied, 479 U.S. 1021, 107 S. Ct. 678, 93 L. Ed. 2d 728 (1986).

The double jeopardy clause prohibits the subdivision of a single conspiracy into multiple violations. *United States v. Brown*, 926 F.2d 779 (8th Cir. 1991).

Sections 5-27-303(b) and 5-27-403(a) constituted two separate offenses and double jeopardy was not violated in that the actor and prohibited conduct in § 5-27-303(b) was different from the actor and prohibited conduct in § 5-27-403(a); as a guardian to the child, defendant husband's conduct was prohibited under § 5-27-303(b), and under § 5-27-403(a), defendant was a person who produced,

directed, or promoted a website which included photographs depicting the lewd exhibition of the breasts of a female and the genitals or pubic area of the child, who was younger than 17. *Cummings v. State*, 353 Ark. 618, 110 S.W.3d 272 (2003).

—New Trial.

Where on arraignment defendant pleaded not guilty and filed a motion to quash the indictment because unauthorized persons were in the grand jury room, which motion was denied and the trial proceeded before a jury which found defendant guilty, and on appeal the cause was remanded with directions that the indictment be quashed and later an information was filed charging defendant with the same offense, the subsequent trial on the same offense did not constitute double jeopardy. *Moseley v. State*, 258 Ark. 485, 527 S.W.2d 616 (1975).

The double jeopardy clause does not prevent the government from retrying a defendant who succeeds in getting his first conviction set aside, through direct appeal or collateral attack, because of some error in the proceedings leading to conviction; however, the important exception to this rule is that retrial is barred if a conviction is reversed because the evidence was legally insufficient, because reversal on that ground is equivalent, for double jeopardy purposes, to a verdict of acquittal. *Parker v. Norris*, 64 F.3d 1178 (8th Cir. 1995), cert. denied, 516 U.S. 1095, 116 S. Ct. 820, 133 L. Ed. 2d 764 (1996).

A retrial of the defendant on a charge of first degree battery was not barred where the defendant was convicted at a bench trial but the trial court thereafter ordered a new trial based on newly discovered evidence which consisted of evidence that a third party committed the crime; the trial court's determination that a new trial was warranted was not equivalent to a finding that the state's case was so lacking that it should not have even been submitted to a jury and did nothing more than indicate that the new evidence would have impacted the outcome of the case only if a factfinder, after resolving questions of credibility and conflicting testimony, were to determine that the weight of the evidence supported an acquittal. *Wilcox v. State*, 342 Ark. 388, 39 S.W.3d 434 (2000).

—Ordinances.

Defendant's manner of driving, which included speeding and driving left of center, violated city's hazardous driving ordinance, while defendant's act of driving his vehicle while being intoxicated violated § 5-65-103; it is clear that these offenses are two separate offenses for the purpose of double jeopardy analysis since each statutory provision requires proof of a fact which the other does not. *Beasley v. State*, 47 Ark. App. 92, 885 S.W.2d 906 (1994).

—Parole or Probation.

A defendant who was sentenced as a habitual offender and determined to be ineligible for parole until he had served three-fourths of his sentence was not placed in double jeopardy; denial of parole is not a new punishment for purposes of double jeopardy. *Clawitter v. Lockhart*, 286 Ark. 131, 689 S.W.2d 558 (1985).

Where the defendant was ordered to pay a fine and simultaneously placed on probation, and the defendant paid the fine but violated the conditions of probation, the defendant was not unconstitutionally subjected to double jeopardy when the court revoked her probation and imposed a five-year sentence. *Diffie v. State*, 290 Ark. 194, 718 S.W.2d 94 (1986).

The prohibition against double jeopardy does not bar a criminal prosecution simply because the same criminal conduct has previously served as the basis for the revocation of the defendant's probation. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

Prohibition against multiple trials was the controlling constitutional principle of double jeopardy and sentencing did not carry the finality that attached to an acquittal, which prohibited retrial; the Constitution did not require that sentencing should be a game in which a wrong move by the judge meant immunity for the prisoner. *Shirley v. State*, — Ark. App. —, — S.W.3d —, 2004 Ark. App. LEXIS 58 (Jan. 21, 2004).

—Reinstatement of Verdict.

Reinstatement of the jury's verdict did not run afoul of this section. *State v. Schaub*, 310 Ark. 76, 832 S.W.2d 843 (1992).

—Separate Offenses.

Double jeopardy argument was rejected where defendant's convictions for incest in

one county were not for the same offense committed in another county and where the offenses in the former county were not based on the same conduct for which he was convicted in the latter county. *Fletcher v. State*, 53 Ark. App. 135, 920 S.W.2d 42 (1996).

—Trial De Novo.

Since defendant was not charged with separate “counts” but rather was convicted in the municipal court of violation of § 5-65-103 without further specification, and the record of that conviction was brought to the circuit court where it was tried de novo and it was again tried as a general violation of § 5-65-103, and since there would be no retrial, the former jeopardy specter did not appear. *Tauber v. State*, 324 Ark. 47, 919 S.W.2d 196 (1996).

Due Process.

—Administrative Hearings.

Where railroad company appeared and contested proceeding before the Railroad Commission (now the Public Service Commission), the railroad can not complain that the order of the commission deprives the railroad of its property without due process. *Saint Louis, I.M. & S. Ry. v. State*, 99 Ark. 1, 136 S.W. 938 (1911).

—Administrative Orders.

Where the telephone company did not show that the Public Service Commission’s rate setting order provided a rate of return upon its investment that was confiscatory or that its income was so drastically affected that its credit was impaired, the commission’s order did not violate due process. *Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm’n*, 267 Ark. 550, 593 S.W.2d 434 (1980).

—Annexation.

Statute which authorizes the annexation of lands in a city or town to a fence district was not unconstitutional as a violation of the due process clause. *Reed v. Hudley*, 208 Ark. 924, 188 S.W.2d 117 (1945).

Where residents of an area which was in the process of being annexed to a city were not allowed to vote in a municipal bond election held before the annexation became effective, such residents were neither denied due process nor taxed without representation. *Tanner v. City of Little*

Rock, 261 Ark. 573, 550 S.W.2d 177 (1977).

—Arrests.

The right not to be arrested without probable cause is clearly established by law. *Robinson v. Beaumont*, 291 Ark. 477, 725 S.W.2d 839 (1987).

Defendant, who was Mirandized twice, did not assert that he lacked requisite mental capacity or that he was suffering from delusions so as to render his confession involuntary, the record showed defendant cogently answered the officer’s questions despite his allegations of intoxication, and the evidence did not establish coercion based upon officer’s possible misleading comment about the strength of the state’s case and the victim’s possible identification of defendant. *Oliver v. State*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 886 (Dec. 10, 2003).

—Attorney Discipline.

Section 7J of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law does not violate the Fourteenth Amendment to the United States Constitution or Article 2, § 8, of the Arkansas Constitution, notwithstanding the argument that it took away an attorney’s right to liberty and property without due process of law, as the practice of law is a privilege, rather than a property right, and the court’s right to control the practice of law was, in and of itself, substantial reason to effectuate his suspension. *Cambiano v. Neal*, 342 Ark. 691, 30 S.W.3d 716 (2000).

—Commencement of Actions.

Where a summons merely directed the petitioners to reply without warning that they were required to answer under penalty of the complaint being taken for confessed and where the petitioners appeared specially in an effort to quash service, they were not denied due process by the defect. *George v. Jernigan*, 262 Ark. 610, 560 S.W.2d 221 (1978).

In a divorce action where service on the husband was attempted by sending the complaint and summons by certified mail to the husband’s last known address but the summons was returned unclaimed, the trial court erred in allowing service by warning order without the filing of an affidavit that a diligent inquiry had been

made into the husband's whereabouts as required by Ark. R. Civ. P. 4(f), and the divorce decree that had been entered was void. *Jackson v. Jackson*, 81 Ark. App. 249, 100 S.W.3d 92 (2003).

—Criminal Insanity.

A defendant acquitted by reason of insanity is entitled to a hearing on the issue of his mental state at the time of commitment, to be represented by counsel, and to confront and cross-examine witnesses; anything less is a denial of due process. *Schock v. Thomas*, 274 Ark. 493, 625 S.W.2d 521 (1981).

Confinement based on a criminal commitment did not violate due process since the commitment was based on a finding that the defendant was a danger to himself and other persons or property and not solely on account of his incompetency to stand trial. *Schock v. Thomas*, 274 Ark. 493, 625 S.W.2d 521 (1981).

—Criminal Proceedings.

Seizure of truck load of whiskey being transported through Arkansas from Louisiana to Kansas where driver did not have a permit did not violate due process clause. *Welborn v. Morley*, 219 Ark. 569, 243 S.W.2d 635 (1951).

A misdemeanor defendant was not denied due process of law by being tried in the mayor's court; the alleged prejudice, if any, of the mayor because of his interest in collecting fines for the city treasury was rendered harmless by the defendant's right to trial de novo on appeal to the circuit court. *Cableton v. State*, 243 Ark. 351, 420 S.W.2d 534 (1967).

The habitual criminal statute did not violate the due process clause of the state Constitution. *Poe v. State*, 251 Ark. 35, 470 S.W.2d 818 (1971).

Where a tenant fails to pay rent without justification, criminal prosecution is permissible under the Arkansas Constitution. *Duhon v. State*, 299 Ark. 503, 774 S.W.2d 830 (1989).

In the sentencing phase, the state may only introduce evidence of prior convictions, and the accused may only introduce evidence to rebut the existence of those convictions. *Conley v. State*, 305 Ark. 422, 808 S.W.2d 745, cert. denied, 502 U.S. 876, 112 S. Ct. 218, 116 L. Ed. 2d 176 (1991).

Section 25-15-212 unconstitutionally

deprives inmates of review of constitutional questions because judicial review of all other administrative questions may be granted, or withheld, according to the legislature's discretion. *Clinton v. Bonds*, 306 Ark. 554, 816 S.W.2d 169 (1991).

Having a Batson objection and response aired before the jury is prejudicial to the defendant and denies her due process of law. *Watson v. State*, 308 Ark. 444, 825 S.W.2d 569 (1992).

Despite the trial court's entry of a judgment of conviction for second-degree sexual assault, it was clear that defendant was tried for and found guilty of first-degree sexual abuse after the statute prescribing that offense was repealed; therefore, it was error because a state could not convict a defendant for conduct that its criminal statute, as properly interpreted, did not prohibit. *Cousins v. State*, 82 Ark. App. 84, 112 S.W.3d 373 (2003).

Although defendant's continued vulgar outbursts during the prosecutor's closing argument were disruptive and heard by the jury, the court was unable to say that the fundamental fairness of the trial was manifestly affected such that a mistrial was justified on the trial court's part. *Newman v. State*, 353 Ark. 258, 106 S.W.3d 438 (2003).

—Discovery.

No discovery violation was found where (1) there was no evidence pursuant to subsection (b) of this rule indicating that certain files defendant sought were in the hands of any state agency or were subject to the jurisdiction of the court, (2) it was impossible to tell from the record precisely what information defendant had sought, and (3) there was no indication that material evidence existed that was required to be turned over to defendant based on due process considerations. *Jimenez v. State*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 825 (Nov. 12, 2003).

—Eminent Domain.

Right of eminent domain may be given irrigation corporations without violating due process clause if the purpose for which the land is taken is public. *Smith v. Arkansas Irrigation Corp.*, 200 Ark. 1022, 142 S.W.2d 509 (1940).

In state's exercise of its right of eminent domain without notice to landowner, individual's right to his day in court is on

question of compensation for property taken and not its appropriation. *Arkansas State Hwy. Comm'n v. Scott*, 238 Ark. 883, 385 S.W.2d 636 (1965).

—Grandparental Rights.

Grandparents who have court ordered visitation rights are constitutionally entitled to receive notice of an adoption proceeding. *Brown v. Meekins*, 278 Ark. 67, 643 S.W.2d 553 (1982).

—Guest Statute.

An act denying a non-paying guest a right to recover damages from a person related within the third degree of consanguinity is not a denial of the constitutional guarantees. *Harlow v. Ryland*, 78 F. Supp. 488 (E.D. Ark. 1948), *aff'd*, 172 F.2d 784 (8th Cir. 1949).

—Liens.

The owner of stock running at large may be charged the expense of taking up and holding the stock by private individual without the statute so allowing being a taking of property without due process. *Hendricks v. Block*, 80 Ark. 333, 97 S.W. 63 (1906).

—Mechanics' Liens.

The mechanics' and materialman's lien provisions reached a constitutional accommodation of the respective interests of creditors, debtors, and the public and the property interests affected were not such that minimum due process standards required more than the statutes afforded in the way of notice and hearing. *South Cent. Dist. of Pentecostal Church of God of Am., Inc. v. Bruce-Rogers Co.*, 269 Ark. 130, 599 S.W.2d 702 (1980).

The Arkansas statutes authorizing the filing and enforcement of mechanics' and materialmen's liens do not allow the taking of a substantial property interest to an extent sufficient to render the statutes unconstitutional as violative of due process of law. *Paragould Paint & Glass, Inc. v. Rodgers*, 269 Ark. 191, 599 S.W.2d 709 (1980).

—Long Arm Statute.

Act allowing service on the secretary of state on behalf of nonresident motorists, and allowing actions to be brought in any state court, does not deny due process clause. *Highway Steel & Mfg. Co. v. Kincaannon*, 198 Ark. 134, 127 S.W.2d 816,

appeal dismissed, 308 U.S. 504, 60 S. Ct. 88, 84 L. Ed. 431 (1939).

—Name Changes.

Where a petition for the name change of minor children is made by one parent as their next friend and mother, notice must be given to the other parent of such petition, for to fail to do so is a violation of the due process clause. *Carroll v. Johnson*, 263 Ark. 280, 565 S.W.2d 10 (1978).

—New Trial.

Where the circuit court denied defendant's motion to delay the trial until he could obtain civilian clothes and forced defendant to appear before the jury while dressed in his prison garb, and defendant did not waive his right to appear in civilian clothes, defendant was prejudiced and was entitled to a new trial. *Box v. State*, 348 Ark. 116, 71 S.W.3d 552 (2002).

Following a new trial, the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal. *Townsend v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 647 (Dec. 4, 2003).

Defendant established a prima facie due-process violation where the state filed an amended information alleging habitual-offender status on remand of his criminal trial, causing defendant received a harsher penalty after the new trial, however, the state sufficiently rebutted the presumption of vindictiveness; the state filed the amended information only after defendant was convicted of several felonies while awaiting his new trial on remand. *Townsend v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 647 (Dec. 4, 2003).

In order to assure the absence of a motivation for vindictiveness, whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear; those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. *Townsend v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 647 (Dec. 4, 2003).

—Nonresidents.

The arrest and trial of nonresidents on violation of game and fish laws was due

process of law. *Anderson v. State*, 213 Ark. 871, 213 S.W.2d 615 (1948).

—Parental Rights.

Statute which provides for the termination of parental rights must meet basic constitutional due process requirements. *Davis v. Smith*, 266 Ark. 112, 583 S.W.2d 37 (1979).

Parental rights are protected by the due process clause of U.S. Const., Amend. 14 and this section. *Bush v. Dietz*, 284 Ark. 191, 680 S.W.2d 704 (1984).

—Public Officeholder.

A county officer indicted for malfeasance or nonfeasance may be suspended until tried without violation of the due process clause, since an office is not property as between the officeholder and the state. *Sumpter v. State*, 81 Ark. 60, 98 S.W. 719 (1906).

The failure to give notice to senator of proceedings at which senate expelled the senator did not violate due process since the senator's right to hold office was not a property right. *Reaves v. Jones*, 257 Ark. 210, 515 S.W.2d 201 (1974).

—Regulation of Business.

An ordinance prohibiting the door to door soliciting of orders from private residences and business was discrimination in favor of local business and a violation of due process. *Wilkins v. Harrison*, 218 Ark. 316, 236 S.W.2d 82 (1951).

In keeping with the provisions of § 18-27-201, the court held that an interest acquired by a pawn shop in pawned goods constituted a sufficient property interest to warrant due process protection and the joint participation between the police department and the true owner of the goods in depriving the shop of the use of the goods constituted state action; thus, §§ 18-27-202 and 18-27-203 were unconstitutional in mandating the pawn shop to return the goods to the owner based merely on the owner's request before a judicial determination of ownership had taken place and in assessing attorney fees and costs against the shop after the owner was subsequently adjudicated the true owner. *Landers v. Jameson*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 649 (Dec. 4, 2003).

—Regulation of Professions.

Board responsible for licensing of physicians may revoke licenses as well with-

out violating due process clause. *State Medical Board of the Arkansas Medical Society v. McCrary*, 95 Ark. 511, 130 S.W. 544 (1910).

Statute regulating the practice of optometry is constitutional and valid. *Duren v. Arkansas State Board of Optometry*, 211 Ark. 565, 201 S.W.2d 578 (1947).

Where one of the five board members who suspended a chiropractor's license was a graduate of Palmer College, the chiropractor did not demonstrate any bias or a denial of due process based on the assertion that the composition of the board of chiropractic examiners resulted in unequal treatment to him as a Palmer College graduate. *Buhr v. Arkansas State Bd. of Chiropractic Exmrs.*, 261 Ark. 319, 547 S.W.2d 762 (1977).

—Retroactive Application.

Application of a 1993 amendment to the direct action statute (§ 19-10-305) did not constitute an unconstitutional retroactive application to any suit pending at time of amendment's effective date since the amendment simply added the clause "except to the extent that they be covered by liability insurance" to qualify an employee's immunity. *National Bank of Commerce v. Quirk*, 323 Ark. 769, 918 S.W.2d 138 (1996).

—Taxation.

Delinquent tax sales conducted without publication of delinquent tax lists are not in violation of the due process clause. *Benham v. Davis*, 196 Ark. 740, 119 S.W.2d 743 (1938).

A statute taxing private citizen residents of state on income derived from without state, but exempting income of domestic corporation from taxation of the comparable income, is not a violation of the due process clause. *Dunklin v. McCarroll*, 199 Ark. 800, 136 S.W.2d 675 (1940).

The taxation of the extrastate income of a domestic corporation violates the due process clause. *Dunklin v. McCarroll*, 199 Ark. 800, 136 S.W.2d 675 (1940); *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

The party attacking taxation legislation has the burden to negate every conceivable basis which might support it. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

With respect to taxation legislation, the due process analysis is the same as the equal protection analysis. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

Proration of tax for licenses issued in the last half of the tax year, but not the first half of the tax year, did not violate the equal protection or due process clauses of the U.S. and Arkansas Constitutions. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

—Third Party Actions.

Where judgment was entered in favor of one party but the effect of judgment was withheld until third party actions could be decided, the court would deprive the judgment winner of property without due process if it dismissed his case for want of prosecution. *Jones v. Hardesty*, 261 Ark. 716, 551 S.W.2d 543 (1977).

—Trust Agreements.

Statute prohibiting trust agreements does not constitute crime of common-law conspiracy and penalties under statute need not comply with due process clause. *Hammond Packing Co. v. State*, 81 Ark. 519, 100 S.W. 407, 100 S.W. 1199 (1907), *aff'd*, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).

—Unpublished Opinions.

Defendant's argument that the prohibition of Ark. Sup. Ct. & Ct. App. R. 5-2, prohibiting citation to unpublished opinions, violated his right of due process under Ark. Const. art. II, §§ 8 and 21 was rejected because the federal judicial power clause had never before been construed to limit courts in the manner in which they conduct their business, and the same could be said for Arkansas's judicial article. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

—Vagueness.

Where the statute is so vague, indefinite, uncertain, yet inclusive, that it would make difficult or impossible access to the judiciary, it is unconstitutional. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

The statute defining first-degree battery is not unconstitutionally vague since it provides sufficient notice of the conduct proscribed and is not defective in not setting out the necessary culpable mental

state since statute defining culpable mental states clearly provides that such mental state must be proved. *Martin v. State*, 261 Ark. 80, 547 S.W.2d 81 (1977).

The allegation that statute did not proscribe the act of fellatio was without merit and the statute was held not to be unconstitutionally vague or too broad in scope. *Connor v. State*, 253 Ark. 854, 490 S.W.2d 114 (1973), appeal dismissed, 414 U.S. 991, 94 S. Ct. 342, 38 L. Ed. 2d 230, rehearing denied, 414 U.S. 1138, 94 S. Ct. 884, 38 L. Ed. 2d 763 (1978).

Where standards for termination of parental rights are the subject of the statute involved, the application of "vagueness" tests should lie somewhere between that given criminal law statutes and that given statutes regulating business, i.e., permitting greater flexibility than where criminal law statutes are involved and less flexibility than with business-regulatory statutes. *Davis v. Smith*, 266 Ark. 112, 583 S.W.2d 37 (1979).

Since the prohibitions set forth in the Sunday closing law were vague and did not satisfy the basic principle that no man shall be held criminally responsible for conduct which he could not reasonably understand to be prohibited, such law fails to meet the minimal requirements of due process. *Handy Dan Imp. Ctr., Inc. v. Adams*, 276 Ark. 268, 633 S.W.2d 699 (1982).

Statute setting the standard for driving while under the influence is not void for vagueness and meets both due process requirements in that it gives a fair warning of the prohibited conduct and a clear standard is set for police enforcement. *Lovell v. State*, 283 Ark. 425, 678 S.W.2d 318 (1984).

Due process requires a statute to be definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt; however, the Constitution does not require impossible standards of specificity and a statute is sufficiently clear if its language conveys sufficient warning when measured by common understanding and practice. *Long v. State*, 284 Ark. 21, 680 S.W.2d 686 (1984).

Due process requires only fair warning, not actual notice; the statutory definition of "intoxicated" fairly warns a person of ordinary intelligence that he is in jeop-

ardly of violating the law if he drives a motor vehicle after consuming a sufficient quantity of alcohol to alter his reactions, motor skills and judgment, to the extent that his driving constitutes a substantial danger to himself or others. *Long v. State*, 284 Ark. 21, 680 S.W.2d 686 (1984).

Capital murder statute is not unconstitutionally vague in violation of the Eighth and Fourteenth Amendments on the grounds that it provides no meaningful distinction between "premeditation and deliberation" and the definition of "purpose" in the first-degree murder statute. *Kemp v. State*, 324 Ark. 178, 919 S.W.2d 943 (1996), cert. denied, 519 U.S. 982, 117 S. Ct. 436, 136 L. Ed. 2d 334 (1996).

—Venue Change.

Where the defendant in a capital murder case was allowed a change of venue to a neighboring county where the judge and lawyers spent five days selecting a jury from 120 prospective jurors, the defendant was not denied his right to a fair trial and due process of law. *Swindler v. State*, 267 Ark. 418, 592 S.W.2d 91 (1979), cert. denied, 449 U.S. 1057, 101 S. Ct. 630, 66 L. Ed. 2d 511 (1980).

—Workers' Compensation.

It is not a violation of due process for the Workers' Compensation Commission to decide cases involving the Second Injury Trust Fund. *Lambert v. Baldor Elec.*, 44 Ark. App. 117, 868 S.W.2d 513 (1993).

Information.

Prosecution by information authorized by Ark. Const. Amend. 21, § 1, is not prohibited by the U.S. Constitution. *McDonald v. Arkansas*, 501 F.2d 385 (8th Cir.), cert. denied, 419 U.S. 1004, 95 S. Ct. 325, 42 L. Ed. 2d 280 (1974).

The harmless error doctrine will not be applied in a case in which a criminal defendant was never charged. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

The requirements for informations and indictments are set out in § 16-85-403 and Ark. Const., Art. 7, § 49. *Archer v. Benton County Circuit Court*, 316 Ark. 477, 872 S.W.2d 397 (1994).

Where defendant was charged with burglary with intent to commit "a crime punishable by imprisonment," and he was apparently tried for burglary with intent to commit attempted theft rather than for burglary with intent to commit theft, and

if the information had specified the crime defendant allegedly intended to commit — and if that crime was indeed attempted theft — then defendant would have been able to make the legal argument that there is no such thing as an intent to attempt theft; because defendant's defense was prejudiced by the information's lack of specificity, his constitutional right to notice of the charges against him was violated. *Forgy v. Norris*, 64 F.3d 399 (8th Cir. 1995).

Presentment or Indictment.

The terms "presentment" and "indictment" were used in their technical sense as known and defined at the time of adoption of Constitution and must be made or preferred by a grand jury. *State v. Cox*, 8 Ark. 436 (1848); *Eason v. State*, 11 Ark. 481 (1851); *Straughan v. State*, 16 Ark. 37 (1855) (decisions under prior Constitution).

When an alleged cause of removal from office is a matter not cognizable by a grand jury, the proceeding may be by information; but when the offense is indictable, the proceeding must be by indictment. *Haskins v. State*, 47 Ark. 243, 1 S.W. 242 (1886).

When there is no valid charging instrument, and yet the defendant is convicted in a court of limited jurisdiction, there is a void judgment of conviction in the court of limited jurisdiction; a void judgment cannot provide valid notice for a subsequent proceeding in circuit court. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

—Date Charges Filed.

Defendant's right to receive notice of the felony charges against him is protected by this section and Ark. Const. Amend. 21, which require those criminal charges to be filed by presentment or indictment; therefore, for purposes of his speedy trial rights and ARCrP 28.2(a), the date charges were filed against defendant was the date the felony information was filed in circuit court, rather than the date the affidavit of probable cause to arrest him was filed. *Archer v. Benton County Circuit Court*, 316 Ark. 477, 872 S.W.2d 397 (1994).

—Indictment.

With certain exceptions, no person may be held to answer a criminal offense unless on the presentment of an indictment. The form of the indictment may be dealt

with by the legislature, but the common-law substance of the indictment must be preserved. *Mott v. State*, 29 Ark. 147 (1874).

—Misdemeanors.

No indictment or written information is necessary in the prosecution of misdemeanors or violations of city ordinances in the police courts. *Burrow v. City of Hot Springs*, 85 Ark. 396, 108 S.W. 823 (1908).

The Rules of Criminal Procedure provide for the issuance of a warrant, citation, or summons to command an accused to court on a misdemeanor charge. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

—Notice of Charge.

Where defendant had appeared for a hearing on a petition to revoke a suspended sentence and was then first made aware of a criminal contempt charge, and of the nature and degree of the offense charged, his conviction of criminal contempt was reversed. *Sellers v. State*, 50 Ark. App. 32, 901 S.W.2d 853 (1995).

Because driving under the influence (DUI) is not a lesser-included offense of driving while intoxicated (DWI), defendant who was only charged with DWI was prepared to defend against the charge of DWI and was prejudiced by circuit court's decision altering the charge to DUI. *McElhanon v. State*, 329 Ark. 261, 948 S.W.2d 89 (1997).

—Penalties.

Prohibition by Constitution of punishment in suit instituted by means other than presentment or indictment of a grand jury for a crime does not extend to recovery of penalties against railroad for failure to signal at crossings. *Saint Louis, A. & T. Ry. v. State*, 56 Ark. 166, 19 S.W. 572 (1892).

Recovery of statutory penalties may be by actions of a civil or criminal nature, and may be commenced by informations. *St. Louis, I.M. & S.R.R. v. State*, 125 Ark. 40, 187 S.W. 1064 (1916).

Right to Counsel.

When a defendant invokes his Sixth Amendment right to counsel for a judicial proceeding unrelated to the present charge, but does not make any indication that he only wishes to deal with the police through counsel, he does not invoke his

Fifth Amendment right to counsel; the Sixth Amendment right to counsel is case specific. *Olive v. State*, 340 Ark. 343, 10 S.W.3d 443 (2000).

An accused's right to counsel after a prosecution has commenced is case specific and cannot be invoked once for all future prosecutions; therefore, defendant's invocation of his right to counsel in the robbery case did not constitute an invocation of the right to counsel during his subsequent custodial interrogation regarding the murder. *Olive v. State*, 340 Ark. 343, 10 S.W.3d 443 (2000).

Self-Incrimination.

Under statute precluding use of testimony given by witness against him in other prosecution, election clerks under indictment can not be ordered to testify. *Bates v. State*, 164 Ark. 240, 261 S.W. 315 (1924).

Statute providing for reclaiming of stock impounded for running at large does not have the effect of requiring owner reclaiming stock to be a witness against himself the statute does not require the owner to reclaim the stock but only permits it and an owner cannot be convicted of allowing his stock to run at large unless he knowingly permits them to do so. *Staples v. Bishop*, 225 Ark. 936, 286 S.W.2d 505 (1956).

Witness in criminal prosecution could not be compelled to answer question as to whether he and defendant participated in crime with which defendant was charged unless there was some circumstance which deprived witness of his constitutional privilege against self-incrimination. *Rhea v. State*, 226 Ark. 581, 291 S.W.2d 505 (1956).

Where, as the witnesses were being sworn, the court asked defense counsel if he wished to have his client sworn at that time and defense counsel made no direct reply, such inquiry did not unduly emphasize the defendant's right not to testify and was not grounds for mistrial. *Newberry v. State*, 261 Ark. 648, 551 S.W.2d 199 (1977).

Circuit court did not err by failing to grant a mistrial in a driving while intoxicated case where the prosecutor commented on defendant's proposed testimony during his opening statement as defense counsel had indicated during voir dire that defendant was going to testify.

Elser v. State, 353 Ark. 143, 114 S.W.3d 168 (2003).

—Abridgement of Right.

Statute which would require a person to appear before a grand jury, and therefore would require testimony regardless of whether such testimony or evidence would tend to incriminate him, is unconstitutional. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

The use of evidence obtained by a search of the defendant's person without a warrant as a result of an unlawful arrest would force the defendant to be a witness against himself in violation of this amendment. *Ward v. State*, 243 Ark. 472, 420 S.W.2d 540 (1967).

Prosecutor's remark in his opening statement to the effect that the decedent could not tell his side of the story and that it would all have to come from the defendant resulted in pre-evidentiary coercion which may have forced the defendant to testify against her will. *Clark v. State*, 256 Ark. 658, 509 S.W.2d 812 (1974).

Prosecutor's repetitive comments on defendant's post-arrest silence concerning shooting implicated the exercise of defendant's right to remain silent. *Pharo v. State*, 30 Ark. App. 94, 783 S.W.2d 64 (1990).

Supreme court rejected defendant's claim he was entitled to a mistrial because an officer's testimony, that defendant had been "in and out of jail," forced him to testify as to the innocuous reasons for this where the record showed defendant intended to take the stand before the prejudicial statement was made, it was not so patently prejudicial that it precluded him from obtaining a fair trial, the prosecutor had not deliberately induced a prejudicial response, and the trial court gave a curative admonition to the jury. *Parker v. State*, — Ark. —, — S.W.3d —, 2004 Ark. LEXIS 44 (Jan. 29, 2004).

—Admissions.

Evidence of a defendant's voluntary admissions in a civil suit may be admitted and is not tantamount, in a criminal prosecution, to compelling the defendant to testify against himself. *Shockley v. State*, 199 Ark. 159, 133 S.W.2d 630 (1939).

To contravene defendant's testimony, state may introduce evidence of defendant's admission to the state's witness

without violating constitutional provision that a defendant can not be compelled to give testimony against himself. *Casteel v. State*, 205 Ark. 82, 167 S.W.2d 634 (1943).

—Confessions.

Testimony given willingly by defendant before the workmen's compensation commission confessing the murder of the victim was admissible on the murder trial for the death of such victim. *Brown v. State*, 208 Ark. 28, 184 S.W.2d 805 (1945).

A voluntary confession by one of two participants in a bank robbery under an oath administered by the prosecuting attorney is admissible in a prosecution of the confessor alone, as not violating self-incrimination, where the confessor is warned that he need not confess and that it will be used against him. *Rowe v. State*, 224 Ark. 671, 275 S.W.2d 887 (1955).

A 16-year-old first offender's confession should have been suppressed where made shortly after counsels' departure and even though alleged to have been given voluntarily. *Vault v. State*, 256 Ark. 343, 507 S.W.2d 111 (1974).

No single factor, but the totality of the circumstances, is significant in determining voluntariness. *Leach v. State*, 311 Ark. 485, 845 S.W.2d 11 (1993).

A threat is not more odious per se than a promise; the real issue concerning incriminating statements made through hope or fear is based on broader considerations of voluntariness in light of the particular inducement, whatever its nature. *Leach v. State*, 311 Ark. 485, 845 S.W.2d 11 (1993).

The court will examine all of the circumstances to determine whether a statement was voluntary; if a promise or threat was made, the court will look first to the police conduct and then to the vulnerability of the defendant. *Leach v. State*, 311 Ark. 485, 845 S.W.2d 11 (1993).

If a promise was made that was permissible and was kept, those are circumstances to consider in determining whether a confession was voluntary. *Leach v. State*, 311 Ark. 485, 845 S.W.2d 11 (1993).

Trial judge's determination that confession was voluntary was correct where there was no evidence of offer of reward or leniency, where defendant was almost 18 years of age when his confession was made, he was advised of his rights on

three occasions, and any psychological tactic used by police did not overbear his free will. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996), cert. denied, 519 U.S. 898, 117 S. Ct. 246, 136 L. Ed. 2d 174 (1996).

The motion to suppress the Miranda-warned confession because it was tainted by the first unwarned questioning was denied where there were none of the characteristics of the coercive atmosphere found in *Shelton v. State*, 287 Ark. 322, 699 S.W.2d 728 (1985) during the first unwarned questioning. *Dye v. State*, 69 Ark. App. 15, 9 S.W.3d 539 (2000).

Where an officer was called to a disturbance at defendant's home, the officer's general question to defendant who had been hiding in the woods of "What's up?" was a general term of salutation and was not designed to elicit an incriminating response; thus, defendant's incriminating statements regarding incest, made in reply to the responding officer's salutation, were admissible. *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003).

—Coroner's Inquest Testimony.

Evidence may be admitted which was given by accused when she was a witness at the coroner's inquest after being warned that she need not testify and, if she did, the evidence would be used against her. *Dunham v. State*, 207 Ark. 472, 181 S.W.2d 242 (1944).

—Fingerprinting.

In order to establish the identification of persons suspected or accused of crimes, such persons may be required to submit to finger printing without invading their natural or constitutional rights. *Shannon v. State*, 207 Ark. 658, 182 S.W.2d 384 (1944).

Defendant's rights were not abridged where he consented to being fingerprinted during an interrogation by police after being stopped near the scene of a rape and burglary. *Loomis v. State*, 261 Ark. 803, 551 S.W.2d 546 (1977).

—Grand Jury Testimony.

An indictment for perjury for false swearing before the grand jury in a criminal indictment against the perjurer must allege that the accused appeared voluntarily. *Claborn v. State*, 115 Ark. 387, 171 S.W. 862 (1914).

Defendant's testimony on trial may be

impeached by calling foreman of grand jury to testify as to defendant's testimony before the grand jury. *Pinkerton v. State*, 126 Ark. 201, 190 S.W. 110 (1916).

Witnesses may be compelled to testify before grand jury under statute so requiring and which prevents such testimony from being used against witness in a criminal case. *Baker v. State*, 177 Ark. 13, 5 S.W.2d 337 (1928).

Where a defendant requested permission to appear before the grand jury, and after being advised that he was not required to give any testimony, freely and voluntarily made detailed statements, it was not error to admit such statements in evidence. *Bratton v. State*, 213 Ark. 537, 211 S.W.2d 428 (1948).

—Mental Examination Results.

Where the judge had reasonable grounds to believe the defendant's plea would be insanity, he was authorized to send defendant to the State Hospital for examination; the report of the examining doctor was introduced and the defendant was not thereby compelled to give evidence against himself. *Clements v. State*, 213 Ark. 460, 210 S.W.2d 912 (1948).

—Physical Examination Results.

Since no person is compelled to be a witness against himself in a criminal case, testimony of physician as to the physical condition of defendant was held to be prejudicial error. *Bethel & Wallace v. State*, 178 Ark. 277, 10 S.W.2d 370 (1928).

—Prior Conviction.

Where the claim of privilege is apparently well founded but the state asserts a claim of prior conviction as robbing the testimony of its incriminating effect, the burden is on the state to establish such prior conviction. *Rhea v. State*, 226 Ark. 581, 291 S.W.2d 505 (1956).

Even though defendant was also charged as a habitual offender, there was no error in the court's allowing him to be cross-examined concerning prior conviction and even ask if he was not a habitual criminal. *Coleman v. State*, 256 Ark. 665, 509 S.W.2d 824 (1974).

—Undercover Agent.

There was nothing unreasonable in the fact that an undercover agent was introduced in defendant's cell in connection with conduct that was unrelated to his

incarceration. *Gustafson v. State*, 267 Ark. 278, 590 S.W.2d 853 (1979).

—Waiver.

Where, in a prosecution for capital murder, the defendant voluntarily gave a confession after being advised of his rights and given an opportunity to engage an attorney, he knowingly and intelligently waived his right against self-incrimination. *Rodgers v. State*, 261 Ark. 293, 547 S.W.2d 419 (1977).

Where the police failed to follow counsel's instructions to stop questioning or to inform the suspect of counsel's efforts to reach him, their actions did not affect the validity of an otherwise proper waiver of defendant's right against self-incrimination. *Mitchell v. State*, 306 Ark. 464, 816 S.W.2d 566 (1991).

Defendant's confusion as to whether unrecorded comments to police officers could be used against him did not invalidate a knowing and intelligent waiver of his right to remain silent. *Bogard v. State*, 311 Ark. 412, 844 S.W.2d 347 (1993).

Where the trial court had concluded that the appellant waived her privilege against self-incrimination, the burden was on the appellant, on appeal, to demonstrate any error on the part of the trial court in finding there was a waiver. *Young v. Young*, 316 Ark. 456, 872 S.W.2d 856 (1994).

Whether an accused had sufficient mental capacity to waive his constitutional rights, or was too incapacitated due to drugs or alcohol to make an intelligent waiver, is a question of fact for the trial court to resolve. The fact that the accused might have been intoxicated at the time of his statement, alone, will not invalidate that statement, but will only go to the weight accorded it. *Kemp v. State*, 324 Ark. 178, 919 S.W.2d 943 (1996), cert. denied, 519 U.S. 982, 117 S. Ct. 436, 136 L. Ed. 2d 334 (1996).

The court looked at the totality of the circumstances surrounding the interrogation and determined that the State proved that the defendant had the requisite level of comprehension to knowingly waive his rights. *Steggall v. State*, 340 Ark. 184, 8 S.W.3d 538 (2000).

Cited: *State v. Whitlock*, 41 Ark. 403

(1883); *Texas v. St. Louis R.R.*, 41 Ark. 488 (1883); *State v. Jackson*, 46 Ark. 137 (1885); *McDonald v. State*, 155 Ark. 142, 244 S.W. 20 (1922); *Rowland v. State*, 213 Ark. 780, 213 S.W.2d 370 (1948), cert. denied, 336 U.S. 18, 69 S. Ct. 641, 93 L. Ed. 1081, rehearing denied, 336 U.S. 941, 69 S. Ct. 745, 93 L. Ed. 1098 (1949); *Harlow v. Ryland*, 218 Ark. 659, 238 S.W.2d 502 (1951); *Ex parte Faulkner*, 221 Ark. 37, 251 S.W.2d 822 (1952); *Green v. State*, 222 Ark. 308, 259 S.W.2d 142 (1953); *Mitchell v. State*, 229 Ark. 469, 317 S.W.2d 1 (1958); *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963); *City of Little Rock v. Andres*, 237 Ark. 658, 375 S.W.2d 370 (1964); *Swanson v. State*, 251 Ark. 147, 471 S.W.2d 351 (1971), cert. denied, 405 U.S. 996, 92 S. Ct. 1272, 31 L. Ed. 2d 465 (1972); *Smith v. State*, 256 Ark. 425, 508 S.W.2d 54 (1974); *Wilson v. City of Pine Bluff*, 278 Ark. 65, 643 S.W.2d 569 (1982); *Boone v. State*, 282 Ark. 274, 668 S.W.2d 17 (1984); *Grooms v. State*, 283 Ark. 224, 675 S.W.2d 353 (1984); *Bailey v. State*, 284 Ark. 379, 682 S.W.2d 734 (1985); *Brewer v. State*, 286 Ark. 1, 688 S.W.2d 736 (1985); *Williamson v. Lockhart*, 636 F. Supp. 1298 (E.D. Ark. 1986); *Williams v. State*, 289 Ark. 443, 711 S.W.2d 825 (1986); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Pursley v. State*, 302 Ark. 471, 791 S.W.2d 359 (1990); *Gallagher v. City of Van Buren*, 30 Ark. App. 193, 786 S.W.2d 837 (1990); *Beard v. State*, 306 Ark. 546, 816 S.W.2d 860 (1991); *Honor v. Yamuchi*, 307 Ark. 324, 820 S.W.2d 267 (1991); *Enoch v. State*, 37 Ark. App. 103, 826 S.W.2d 291 (1992); *Duncan v. State*, 308 Ark. 205, 823 S.W.2d 886 (1992); *Leonards v. E.A. Martin Mach. Co.*, 321 Ark. 239, 900 S.W.2d 546 (1995); *Cook v. State*, 321 Ark. 641, 906 S.W.2d 681 (1995); *O'Neill v. State*, 322 Ark. 299, 908 S.W.2d 637 (1995); *Childress v. Humphrey*, 329 Ark. 504, 950 S.W.2d 220 (1997); *Priest v. UPS*, 58 Ark. App. 282, 950 S.W.2d 476 (1997); *Shepherd v. Washington County*, 331 Ark. 480, 962 S.W.2d 779 (1998); *Conway v. State*, 62 Ark. App. 125, 969 S.W.2d 669 (1998); *Schalk v. State*, 63 Ark. App. 251, 977 S.W.2d 495 (1998); *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002).

§ 9. Excessive bail or punishment prohibited — Witnesses — Detention.

Excessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted; nor witnesses be unreasonably detained.

RESEARCH REFERENCES

ALR. Propriety of carrying out death sentences against mentally ill individuals. 111 ALR 5th 491.

Ark. L. Rev. Killenbeck, And Then They Did ... ? Abusing Equity in the Name of Justice, 44 Ark. L. Rev. 235.

Note: Henderson v. Arkansas: One

Strike and You're Out — Does the Arkansas Constitution Provide Its Citizens with More Protection Than the United States Constitution in the Context of Cruel and/or Unusual Punishment?, 56 Ark. L. Rev. 229.

CASE NOTES

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- Electrocution.
- Fines.
- Habitual criminals.
- Insane defendant.
- Killing to prevent escape.
- Life sentence.
- Mentally retarded defendants.
- Punitive damages.
- Separate offenses.
- Solitary confinement.
- Statutory limits.
- Victim impact statute.

Bail.

The right to bail pending appeal after conviction is a matter of judicial discretion in the individual case. Lane v. State, 217 Ark. 428, 230 S.W.2d 480 (1950).

In view of mandate that money bail should be used only as a last resort to ensure the court appearance of an accused, the circuit court erred in refusing to require the municipal court to make a determination that no other condition would ensure accused's court appearance before setting money bail. Thomas v. State, 260 Ark. 512, 542 S.W.2d 284 (1976).

Punishment.

Any challenge by the defendant to the death penalty as a cruel and unusual

punishment contrary to the Constitution was moot, for he was sentenced to life imprisonment without parole. Venable v. State, 260 Ark. 201, 538 S.W.2d 286 (1976).

Where defendant had three prior felony convictions and was convicted of four separate counts of aggravated robbery, a sentence of four consecutive life sentences was neither an abuse of discretion nor cruel and unusual punishment. Duncan v. State, 267 Ark. 41, 588 S.W.2d 432 (1979).

No punishment prescribed by statute is cruel and unusual unless it is barbarous, or unknown to the law, or so wholly disproportionate to the nature of the offense as to shock the moral sense of the community. Chaviers v. State, 267 Ark. 6, 588 S.W.2d 434 (1979).

Defendant's 25-year sentence for his conviction of delivery of a controlled substance, where the jury found defendant guilty of possessing .209 grams of crack cocaine, was not disproportionate, nor cruel and unusual, as it was a mid-range sentence for the Class Y felony offense and none of the sentencing exceptions applied. Williams v. State, — Ark. App. —, — S.W.3d —, 2004 Ark. App. LEXIS 10 (Jan. 7, 2004).

—Consecutive Sentences.

The cumulative effect of consecutive sentences does not make punishment cruel and unusual; accordingly, where defendant was found guilty by a jury which imposed the maximum penalty and the trial court exercised its discretion in or-

dering the sentences to be served consecutively, the cumulative sentence of 160 years imprisonment and \$160,000 fine was not barbarous, outside the law, or wholly disproportionate to the nature of the offense charged. *Thompson v. State*, 280 Ark. 265, 658 S.W.2d 350 (1983).

—Corporal Punishment.

Corporal punishment of penitentiary inmates for infractions of prison discipline violates this section. *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968).

—Death Penalty.

The death penalty did not constitute cruel and unusual punishment. *Graham v. State*, 253 Ark. 462, 486 S.W.2d 678 (1972).

—Electrocution.

Death by electrocution has been decided by the General Assembly as the means of execution in death penalty cases and, therefore, it is not up to the jury to decide how a defendant is to die, nor whether death by electrocution is cruel and unusual punishment; in addition it is not a circumstance to be considered when the jury deliberates on mitigating circumstances: *Swindler v. State*, 267 Ark. 418, 592 S.W.2d 91 (1979), cert. denied, 449 U.S. 1057, 101 S. Ct. 630, 66 L. Ed. 2d 511 (1980).

—Fines.

Former statute imposing penalty of \$25 for each package of untaxed cigarettes possessed was not on its face unconstitutional excessive. *Walton v. Scott*, 247 Ark. 268, 445 S.W.2d 97 (1969).

A civil punitive damages award does not fall within the constitutional prohibition against excessive fines in this section. *Delta Sch. of Commerce, Inc. v. Harris*, 310 Ark. 611, 839 S.W.2d 203 (1992).

—Habitual Criminals.

Total sentence of 24 years on four charges of forging and uttering two checks totaling \$77.46 under the habitual criminal provisions did not constitute cruel and unusual punishment. *Wilson v. State*, 251 Ark. 900, 475 S.W.2d 543 (1972).

—Insane Defendant.

The procedural requirement for the protection of an insane person's right not to be executed under this section and U.S. Const. Amend. 8, as set out in *Marks v.*

United States, 430 U.S. 188 (1977), are met by § 16-90-506(d)(1). *Singleton v. Endell*, 316 Ark. 133, 870 S.W.2d 742, cert. denied, 513 U.S. 960, 115 S. Ct. 419, 130 L. Ed. 2d 334 (1994).

—Killing to Prevent Escape.

Under the Constitution, the legislature can not impose the death penalty as punishment for a simple misdemeanor, and one arrested for such a misdemeanor was wrongfully killed when this was the only means to prevent his escape. *Thomas v. Kinkead*, 55 Ark. 502, 18 S.W. 854 (1892).

—Life Sentence.

The imposition of a life sentence under § 5-4-501(d) for aggravated robbery and theft of property did not constitute cruel and unusual punishment under the Eighth Amendment to the United States Constitution or this section. *Bunch v. State*, 344 Ark. 730, 43 S.W.3d 132 (2001).

—Mentally Retarded Defendants.

Commitment to the Department of Correction, following conviction for first-degree rape, of 18-year-old defendant who, it was testified, had a mental age of approximately nine years, did not constitute cruel and unusual punishment. *Allen v. State*, 253 Ark. 732, 488 S.W.2d 712 (1973).

—Punitive Damages.

In a conversion and interference with business and business expectancy action, the ratio between the punitive-damages award of \$250,000, and the compensatory damages award of \$35,000, was a ratio of approximately 7:1, was well within the acceptable range when reviewing that particular factor under recent United States Supreme Court rulings, and did not violate the prohibition against excessive fines and cruel and unusual punishment under U.S. Const. Amend. VIII. *Hudson v. Cook*, 82 Ark. App. 246, 105 S.W.3d 821 (2003).

—Separate Offenses.

Convictions of separate offenses of selling liquor without a license may be added without violating the cruel and unusual punishment prohibition of the Constitution. *Ex parte Brady*, 70 Ark. 376, 68 S.W. 34 (1902).

—Solitary Confinement.

Punishment by inflicting solitary confinement for contempt is cruel and un-

usual within the meaning of the constitutional prohibition. *Williams v. State*, 125 Ark. 287, 188 S.W. 826 (1916).

—Statutory Limits.

Punishment in excess of the punishment provided for grand larceny, but within the limit fixed for the larceny of a horse, is permissible where the stolen articles include a horse, buggy, and harness. *Daugherty v. State*, 130 Ark. 333, 197 S.W. 576 (1917).

A statute fixing punishment for the acceptance of bank deposits in an insolvent bank at imprisonment for not less than one year, and with no maximum, does not violate the Constitution as to cruel or unusual punishment. *Collman v. State*, 161 Ark. 351, 256 S.W. 357 (1923).

When the defendant was found guilty on each of two charges, and the punishment fixed was not in excess of the statutory provisions, the conviction will not be disturbed on grounds that it is cruel and unusual. *Hicks v. State*, 213 Ark. 108, 209 S.W.2d 451 (1948).

Statute fixing maximum penalty of seven years for conviction of manslaughter was not cruel and unusual punishment prohibited by Constitution because minimum for second degree murder was only five years; the legislature has right to fix length of sentences under each division of crime. *Johnson v. State*, 214 Ark. 902, 218 S.W.2d 687 (1949).

Victim Impact Statute.

Victim impact statute (§ 5-4-602 (4)) is not void for vagueness and not violative of this section. *Kemp v. State*, 324 Ark. 178, 919 S.W.2d 943 (1996), cert. denied, 519 U.S. 982, 117 S. Ct. 436, 136 L. Ed. 2d 334 (1996).

Cited: *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968); *State v. Bruton*, 246 Ark. 293, 437 S.W.2d 795 (1969); *Miller v. State*, 269 Ark. 341, 605 S.W.2d 430 (1981); *Williams v. State*, 325 Ark. 432, 930 S.W.2d 297 (1996); *Johnson v. State*, 326 Ark. 430, 934 S.W.2d 179 (1996).

§ 10. Right of accused enumerated — Change of venue.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed; provided, that the venue may be changed to any other county of the judicial district in which the indictment is found, upon the application of the accused, in such manner as now is, or may be prescribed by law; and to be informed of the nature and cause of the accusation against him, and to have a copy thereof; and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be heard by himself and his counsel.

Cross References. As to right to speedy trial in city court, see § 16-96-111.

As to rules governing the right to a speedy trial, see ARCrP 28.1 et seq.

RESEARCH REFERENCES

ALR. Sufficiency of efforts to procure missing witness' attendance so as to justify admission of his former testimony — state cases. 3 ALR 4th 87.

Adequacy of defense counsel's representation of criminal client regarding right to and incidents of jury trial. 3 ALR 4th 601.

Right of accused in criminal prosecution to presence of counsel at court-appointed or approved psychiatric examination. 3 ALR 4th 910.

Right of defendant in criminal proceeding to have immunity from prosecution granted to defense witness. 4 ALR 4th 617.

Adequacy of defense counsel's representation of criminal client regarding speedy trial and related matters. 6 ALR 4th 1208.

Adequacy of defense counsel's representation of criminal client regarding venue and recusal matters. 7 ALR 4th 942.

Waiver, after not guilty plea, of jury trial in felony case. 9 ALR 4th 695.

Continuances at instance of state public defender or appointed counsel over defendant's objections as excuse for denial of speedy trial. 16 ALR 4th 1283.

Interference or denial of accused's right to have attorney initially contact accused. 18 ALR 4th 669.

Conditions interfering with accused's view of witness as violation of right of confrontation. 19 ALR 4th 1286.

Waiver of right to counsel by insistence upon speedy trial in state criminal case. 19 ALR 4th 1299.

Right of accused to be present at suppression hearing or at other hearing or conference between court and attorneys concerning evidentiary questions. 23 ALR 4th 955.

Sexual psychopaths, bail pending determination of psychopathy under statutes relating to. 24 ALR 2d 373.

Minor's waiver of right to counsel. 25 ALR 4th 1072.

Timely brief in appeal by accused, consequences of prosecution's failure to file. 27 ALR 4th 213.

Effect on liability of bail bond surety of state's delay in obtaining indictment or bringing defendant to trial. 32 ALR 4th 600.

Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific case. 33 ALR 4th 429.

Right of accused, in state criminal trial, to insist, over prosecutor's or court's objection, on trial by court without jury. 37 ALR 4th 304.

Admissibility or use in criminal trial of testimony given at preliminary proceeding by witness unavailable at trial. 38 ALR 4th 378.

Application of speedy trial statute to dismissal or other termination of prior indictment or information and bringing of new indictment or information. 39 ALR 4th 899.

Propriety of use of multiple juries at joint trial of multiple defendants in state criminal prosecution. 41 ALR 4th 1189.

Confidentiality, constitutionality, with respect to accused's rights to information or confrontation, of statute according confidentiality to sex crime victim's commu-

nications to sexual counselor. 43 ALR 4th 395.

Limitations on state prosecuting attorney's discretion to initiate prosecution by indictment or information. 44 ALR 4th 401.

Juror's reading of newspaper account of trial in state criminal case during its progress as ground for mistrial, new trial, or reversal. 46 ALR 4th 11.

Illness or incapacity of judge, prosecuting officer, or prosecution witness as justifying delay in bringing accused speedily to trial — state cases. 78 ALR 3d 297.

Adequacy of defense counsel's representation of criminal client-conduct at trial regarding issues of insanity. 95 ALR 5th 125.

Denial of, or interference with, accused's right to have attorney initially contact accused. 96 ALR 5th 327.

Failure of state prosecutor to disclose exculpatory medical reports and tests as violating due process. 101 ALR 5th 187.

Validity and efficacy of minor's waiver of right to counsel — cases decided since application of *Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). 101 ALR 5th 351.

Failure of state prosecutor to disclose pretrial statement made by crime victim as violating due process. 102 ALR 5th 327.

Denial of accused's request for initial contact with attorney -/ drunk driving cases. 109 ALR 5th 611.

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 890 et seq.

Ark. L. Rev. Rights to Counsel Required by the Fourteenth Amendment in State Criminal Prosecutions, 4 Ark. L. Rev. 177.

Continuances in Arkansas, 4 Ark. L. Rev. 449.

Case Notes — Courts — Contempt — Photographing Court Proceedings, 11 Ark. L. Rev. 174.

The Right to Counsel for Misdemeanants in State Courts, 20 Ark. L. Rev. 156.

Speedy Trial: A Comparative Analysis Between the American Bar Association Standards of Criminal Justice and Arkansas Law, 25 Ark. L. Rev. 234.

Note, Speedy Trial and Excludable Delays Under the Arkansas Rules of Criminal Procedure: *Norton v. State*, 35 Ark. L. Rev. 591.

Notes, *Shockley v. State: The Constitutionality of the Arkansas Habitual Offender Determination Procedure*, 39 Ark. L. Rev. 553.

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Affirmative Defenses.

Defendant's due process rights were not violated by trial court's decision to refuse to allow the introduction of a mistake-of-age defense in a rape trial because the legislature had the authority to define crimes and defenses; moreover, there were exceptions to the rule that every crime was required to contain a mens rea element. *Gaines v. State*, — Ark. —, 118 S.W.3d 102, 2003 Ark. LEXIS 457 (2003).

C.J.S. 16C C.J.S. Constitutional Law, § 992 et seq.

Purpose.

The purpose of this section is to expedite adjudications so that none can fairly say that the right to acquittal was stifled because those charged with official duty preferred to procrastinate. *Maxwell v. State*, 216 Ark. 393, 225 S.W.2d 687 (1950), cert. denied, 343 U.S. 929, 72 S. Ct. 758, 96 L. Ed. 1339 (1952).

Copy of Charge.

Although defendant is entitled to a copy of indictment before arraignment, the legislature may regulate manner of securing the right so as to force the payment of a fee for such copy. *Howard v. State*, 37 Ark. 265 (1881).

A copy of the indictment will be presumed to have been furnished, or the right thereto waived, in the absence of an affirmative showing of demand therefor or that a copy was not furnished. *Wright v. State*, 42 Ark. 94 (1883).

The failure of a clerk to furnish defendant a copy of the indictment 48 hours before arraignment is not grounds for an arrested judgment but for a new trial. *McCoy v. State*, 46 Ark. 141 (1885).

A copy of an indictment duly served is not invalidated by the mere omission, through clerical error, of the defendant's name in one place. *Allison v. State*, 74 Ark. 444, 86 S.W. 409 (1905).

The clerical omission of the showing that the indictment was endorsed by the grand jury as a true bill in the copy furnished the defendant does not furnish grounds to quash. *Glover v. State*, 116 Ark. 588, 172 S.W. 876 (1915).

The statute which regulates the contents of an indictment does not violate the constitutional provision that the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. *Smith v. State*, 231 Ark. 235, 330 S.W.2d 58 (1959).

Where defendant was found guilty of manslaughter as a lesser included offense, defendant was informed of the nature of the accusation against him. *Slavens v. State*, 1 Ark. App. 245, 614 S.W.2d 529 (1981).

When there is no valid charging instrument, and yet the defendant is convicted in a court of limited jurisdiction, there is a void judgment of conviction in the court of limited jurisdiction; a void judgment cannot provide valid notice for a subsequent proceeding in circuit court. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

The harmless error doctrine will not be applied in a case in which a criminal defendant was never charged. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

The Rules of Criminal Procedure provide for the issuance of a warrant, citation, or summons to command an accused to court on a misdemeanor charge. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

—Contents.

To ensure the right of a defendant to know the accusation against him, an indictment should (1) inform defendant that

he is called upon to answer, (2) inform the court of a definite offense, and (3) protect defendant against a further prosecution. *State v. Cadle*, 19 Ark. 613 (1858) (decision under prior Constitution).

Although it is better and safer practice to include in an information or indictment the date on which or the time frame in which an offense occurred, it is not necessarily fatal to an indictment or information if such data is not included, unless time is an essential element of the offense. *Bonds v. State*, 296 Ark. 1, 751 S.W.2d 339 (1988).

Where a deputy city attorney signed a form affidavit and acknowledged that the affiant executed the instrument before him, and following the deputy city attorney's signature there was a separate return reflecting that the municipal judge examined the instrument and found that it demonstrated reasonable cause for the issuance of an arrest warrant for the offense shown, and on a separate form defendant acknowledged in writing that he received a trial notice from the municipal court that he was to be tried for third degree battery on July 1, 1992, the instrument signed by the affiant and the deputy city attorney met all of the notice requirements of due process under U.S. Const. Amend. 5, 6, and 14 and met the notice requirements of Ark. Const., Art. 2, § 8 and this section; while there may well have been irregularities in the form of the instrument, they were the sort of irregularities that were waived if not raised. *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

—Waiver.

A defendant at large on bail is not entitled to service of a copy of the indictment or a copy of the venire before trial. *Dawson v. State*, 29 Ark. 116 (1874).

A defendant may not object that he has not been furnished a copy of the indictment after he pleads to the indictment, declares himself ready for trial, the jury is impanelled, and the trial commenced. *Johnson v. State*, 43 Ark. 391 (1884).

A person accused of a capital offense waives his right to a copy of the indictment 48 hours before arraignment if he fails to object at the time of arraignment that no such copy has been furnished. *Powell v. State*, 74 Ark. 355, 85 S.W. 781 (1905).

Exculpatory Evidence.

Defendant's argument that the state's failure to pay for an additional blood-alcohol test violated her state and federal constitutional rights to gather exculpatory evidence was without merit since defendant stipulated to the accuracy of the 0.05% blood-alcohol test result and raised no argument demonstrating the necessity of a second test to an adequate defense. *Roberts v. State*, 324 Ark. 68, 919 S.W.2d 192 (1996).

Impartial Jury.

In a case where the jury cannot agree, it is error for the court to instruct the jury that there is no conflict in testimony and that the law is plain and simple since the accused has the right to a speedy trial by an impartial jury. *Parker v. State*, 130 Ark. 234, 197 S.W. 283 (1917).

The question of impartiality of a jury is one of law; such a jury must consist of 12 impartial men whose impression of the merits of the cause is fixed by testimony after entering jury panel. *Lane v. State*, 168 Ark. 528, 270 S.W. 974 (1925).

A defendant accused of murder was not prejudiced by inadmissible matter when the court emphatically directed the jury that they should disregard such statements. *McCabe v. State*, 210 Ark. 1076, 199 S.W.2d 945, cert. denied, 331 U.S. 852, 67 S. Ct. 1733, 91 L. Ed. 1860 (1947).

The right of a defendant in a criminal prosecution to a trial by an impartial jury is guaranteed by this section of the Constitution. *Bailey v. Henslee*, 287 F.2d 936 (8th Cir. 1961), cert. denied, 368 U.S. 877, 82 S. Ct. 121, 7 L. Ed. 2d 78 (1961).

When a right to a jury trial exists, a jury's proper composition is fundamental. *Bailey v. Henslee*, 287 F.2d 936 (8th Cir. 1961), cert. denied, 368 U.S. 877, 82 S. Ct. 121, 7 L. Ed. 2d 78 (1961).

The question of a juror's qualification lies within the sound judicial discretion of the trial judge and defendant has the burden of showing the prospective juror's disqualification. *Beed v. State*, 271 Ark. 526, 609 S.W.2d 898 (1980).

The constitutional guaranty of an impartial jury is a judicial question addressing itself to the sound discretion of the trial court and will not be reversed absent a manifest abuse of that discretion. *Gonzalez v. State*, 32 Ark. App. 10, 794 S.W.2d 620 (1990).

—Bias.

Jurors are incompetent if they have formed an opinion as to the guilt or innocence of defendant even if they state that they can give a fair and impartial trial. *Polk v. State*, 45 Ark. 165 (1885).

Where jurors publicly expressed opinions indicating great prejudice against defendant with a definite opinion as to defendant's guilt, but denied such prejudice in qualifying as jurors, defendant is entitled to a new trial. *Anderson v. State*, 200 Ark. 516, 139 S.W.2d 396 (1940).

In a prosecution for assault, a remark by the prosecutor that the defendant could sell enough whiskey to pay a fine if imposed is highly prejudicial to defendant's right to an impartial jury trial where there was no evidence connecting the defendant with drinking or the sale of intoxicating liquor. *Todd v. State*, 202 Ark. 287, 150 S.W.2d 46 (1941).

Jurors who had formed opinions concerning the guilt or innocence of the defendant and who, while willing to alter such opinions upon hearing evidence to the contrary, declared they would retain such opinions until they heard such evidence prevented the jury from being a fair and impartial jury within the meaning of this section. *Glover v. State*, 248 Ark. 1260, 455 S.W.2d 670 (1970).

Where a juror acknowledged during voir dire that his nephew was a drug undercover agent and that he had talked with the nephew about his experiences, the juror's presumptive bias, even after court interrogation, was sufficient to require his exclusion from the trial of defendant for sale and delivery of a controlled substance. *Pickens v. State*, 260 Ark. 633, 542 S.W.2d 764 (1976).

The constitutional guarantee of an impartial jury required that a defendant be given a new trial where a juror failed to reveal his relationship to a prosecution witness and such relationship would have disqualified the juror if revealed. *Baysinger v. State*, 261 Ark. 605, 550 S.W.2d 445 (1977).

Where all of the jurors who served stated they believed they could give the defendants a fair and impartial trial, but nevertheless, 10 of those 12 had been subjected to extensive media coverage and several of them had formed an opinion that the defendants were guilty or would require proof of their innocence, the jury

did not meet the requirements of this section. *Ruiz v. State*, 265 Ark. 875, 582 S.W.2d 915 (1979), cert. denied, 454 U.S. 1093, 102 S. Ct. 659, 70 L. Ed. 2d 631 (1981).

Although the brother of a prospective juror, who was a police officer, did not testify, considering the role of this officer with reference to the initiation of the investigation, the search and the identification procedure, he could not be eliminated as one on whose complaint the prosecution was instituted, nor were prospective juror's answers on voir dire sufficient to eliminate him as one who was prevented by a relationship or by circumstances from acting impartially; hence, failure to sustain the challenge to this juror for cause was prejudicial error. *Beed v. State*, 271 Ark. 526, 609 S.W.2d 898 (1980).

Where defendant submitted the affidavits of nine Arkansas County residents, each of whom opined that defendant could not receive a fair and impartial trial in the county, but defendant also indicated that an impartial jury was selected and that each juror in fact indicated that he or she had not formed an opinion about defendant's guilt or innocence based upon what had been printed in the area newspapers, there was no error in the trial court's denial of the motion for change of venue. *Sims v. State*, 320 Ark. 528, 900 S.W.2d 508 (1995).

—Death Penalty.

Defendant's motion that prospective jurors who were opposed to death penalty not be excused was properly denied. *Venable v. State*, 260 Ark. 201, 538 S.W.2d 286 (1976); *Swindler v. State*, 267 Ark. 418, 592 S.W.2d 91 (1979), cert. denied, 449 U.S. 1057, 101 S. Ct. 630, 66 L. Ed. 2d 511 (1980).

—Panel.

In view of testimony of one of the jury commissioners and stipulations entered into on subject of racial discrimination by such commissioners, trial court did not violate impartial jury right of Negro who was found guilty of first degree murder in killing of white deputy sheriff. *Smith v. State*, 218 Ark. 725, 238 S.W.2d 649 (1951).

Defendant charged with involuntary manslaughter was not deprived of a fair

trial because he was required to select a jury from a jury panel, which had just heard a case of assault in which the defendant had testified and in which defendant's character had been attacked viciously, where members of jury panel testified they were without prejudice against defendant in manslaughter case. *Montaque v. State*, 219 Ark. 385, 242 S.W.2d 697 (1951).

A Negro defendant was not deprived of trial by an impartial jury where the regular jury panel of 27 included two Negroes and the alternate panel of 27 included seven Negroes, the panels being selected by three jury commissioners, one of whom was a Negro, with evidence that at least 14% of the members of petit juries for the past 28 terms had been Negroes in a county with a Negro electorate of 10%-11%. *Maxwell v. Stephens*, 229 F. Supp. 205 (E.D. Ark. 1964), aff'd, 348 F.2d 325 (8th Cir.), cert. denied, 382 U.S. 944, 86 S. Ct. 387, 15 L. Ed. 2d 353 (1965).

—Peremptory Challenges.

Where the record reflected that, after defendant had used four of his seven challenges, the panel was exhausted and additional jurors were summoned and thereafter the record was silent as to whether further peremptory challenges were exercised, it cannot be contended that the defendant was forced to go to trial with a jury composed of some individuals who were biased. *Strode v. State*, 257 Ark. 480, 517 S.W.2d 954 (1975).

When a defendant has used all his peremptory challenges before a prospective juror is called, he may only challenge that juror for cause and not peremptorily, and it is reversible error to thereafter hold a biased juror competent. *Beed v. State*, 271 Ark. 526, 609 S.W.2d 898 (1980).

—Voir Dire.

Where three prospective jurors in a capital murder case admitted during voir dire that they had some prior knowledge of the case, but all three said they would disregard any information they had and give the defendant a fair trial, the trial judge did not abuse his discretion in allowing these jurors to serve. *Swindler v. State*, 267 Ark. 418, 592 S.W.2d 91 (1979), cert. denied, 449 U.S. 1057, 101 S. Ct. 630, 66 L. Ed. 2d 511 (1980).

While a venireman is generally impar-

tial when he states that he can put aside any preconceived opinions and give the accused the benefit of all doubts that the law requires, it is not an automatic cure-all for opinions, relationships, or information that could disqualify one. *Walton v. State*, 279 Ark. 193, 650 S.W.2d 231 (1983).

The voir dire examination of the jury must be held in open court; the right to an open trial may be asserted by the public, the press, and the accused. *Taylor v. State*, 284 Ark. 103, 679 S.W.2d 797 (1984).

New Trial.

Where the defendant was convicted of possession of a controlled substance with intent to deliver and the simultaneous possession of drugs and a firearm and his conviction for the former offense was reversed on appeal, there was no violation of the defendant's rights under Ark. Const. art. 2, § 10 when the trial court, on remand, refused to allow a new trial on the simultaneous possession charge where the defendant's conviction for simultaneous possession was not challenged on appeal. *Colbert v. State*, 346 Ark. 144, 55 S.W.3d 268 (2001).

Personal Presence.

Where the defendant is necessarily absent from the courtroom for a few minutes by permission of the court, the taking of testimony in his absence is prejudicial error. *Bennett v. State*, 62 Ark. 516, 36 S.W. 947 (1896).

A defendant is privileged to be present in person and by counsel whenever any substantive step is taken by the court in his case. *Davidson v. State*, 108 Ark. 191, 158 S.W. 1103 (1913).

Defendant cannot complain of absence at time his own motion for a new trial was presented; it appearing that no matter of fact was presented in the motion. *Baldwin v. State*, 119 Ark. 518, 178 S.W. 409 (1915).

Where a ruling made by trial court in the absence of the defendant could not result to his prejudice, the cause will not be reversed. *Whittaker v. State*, 173 Ark. 1172, 294 S.W. 397 (1927).

Where a court gave admonition as law requires while accused was confined in jail, there is no prejudice to the accused and there will be no reversal. *Whittaker v. State*, 173 Ark. 1172, 294 S.W. 397 (1927).

—Examining Evidence.

The defendant must be permitted to

accompany the jury for a view of the locality of the crime. *Benton v. State*, 30 Ark. 328 (1875).

It was error for the jury to take the death weapon to jury room for examination out of the presence of the defendant. *Forehand v. State*, 51 Ark. 553, 11 S.W. 766 (1889).

—Felony Charge.

A defendant under indictment for a felony must be present whenever a substantive step is taken by the court. He need not actually be prejudiced by a proceeding in his absence, but only that he might have lost an advantage or been prejudiced. *Bearden v. State*, 44 Ark. 331 (1884).

—Misdemeanor Charge.

The court may, within its discretion, refuse to try a misdemeanor in the absence of the defendant. *Bridges v. State*, 38 Ark. 510 (1881).

—Summoning Jurors.

The court may order the sheriff to summon tales jurors to attend on the day set for trial, and it is not a step entitling the defendant to demand that he be present when the step is taken. *Mabry v. State*, 50 Ark. 492, 8 S.W. 823 (1888).

—Venue Change.

The making of an order for a change of venue in the absence of the defendant in a criminal case, upon his own petition, is not grounds for reversal of a conviction. *Polk v. State*, 45 Ark. 165 (1885).

—Verdict Announcement.

In a prosecution for a felony, if the record did not show defendant's presence when the verdict was delivered, a new trial would be granted. *Cole v. State*, 10 Ark. 318 (1850) (decision under prior Constitution).

—Waiver.

The state cannot demand a trial in the absence of the defendant. If the defendant waives, a trial of a misdemeanor may be made in his absence. *Owen v. State*, 38 Ark. 512 (1881).

If court permits trial of defendant, with his consent, in his absence, and there is a verdict of imprisonment, the defendant can not complain of the verdict. *Martin v. State*, 40 Ark. 364 (1883).

The constitutional guaranty that the

defendant shall have the right to be confronted with the witnesses against him does not include the right to abscond and then complain of his own absence. *Gore v. State*, 52 Ark. 285, 12 S.W. 564 (1889); *Lee v. State*, 56 Ark. 4, 19 S.W. 16 (1892).

A defendant may, through his attorney waive the returning of the verdict in his presence; in the absence of a showing to the contrary, the authority of the attorney will be presumed. *Davidson v. State*, 108 Ark. 191, 158 S.W. 1103 (1913).

Despite the constitutional right to be present at one's criminal prosecution, that right may, under certain circumstances be waived by a defendant's belligerent or disruptive behavior; defendant was properly prevented from being present at his trial where he repeatedly used grossly inappropriate language and profanity toward the trial judge during the pretrial hearing, and where the judge gave the defendant a chance to display proper courtroom decorum before the trial began. *Goston v. State*, 55 Ark. App. 17, 930 S.W.2d 387 (1996).

Even though a trial court's knowledge of a defendant's past behavior is a relevant consideration when determining whether a defendant has forfeited his right to be present in the courtroom during his trial, where the trial court did not give the defendant, who had a history of repeated disruptions, any opportunity to reclaim his right to confrontation after repeated reassurances that he could maintain appropriate behavior and where the court did not inform the defendant that he had permanently forfeited his right of confrontation but instead removed him for the entire length of the trial, the trial court abused its discretion. *Goston v. State*, 327 Ark. 486, 939 S.W.2d 818 (1997).

Public Trial.

Where the court's action in clearing the court room does not appear essential to the maintenance of decorum, proceeding with the trial over defendant's objection violated defendant's right to a public trial guaranteed by this section. *Sirratt v. State*, 240 Ark. 47, 398 S.W.2d 63 (1966).

Court proceedings must not only be fair and impartial, they must also appear to be fair and impartial not only for the benefit of the litigants directly involved, but this is necessary in order to maintain the public's confidence in the judiciary. *Oliver v.*

State, 268 Ark. 579, 594 S.W.2d 261 (Ct. App. 1980).

United States Const. Amend. 6 and this section guarantee an accused a speedy and public trial and to be confronted with the witnesses against him, but neither contains anything that might be seen as a right to limit those who may want to attend the trial; therefore, Evid. Rule 616 is not unconstitutional. *Stephens v. State*, 290 Ark. 440, 720 S.W.2d 301 (1986).

Right to Counsel.

Defendant is not entitled to be heard at all times by all counsel he sees fit to employ. *Adams v. State*, 176 Ark. 916, 5 S.W.2d 946 (1928).

While a trial judge is not a mere umpire and may interrogate witnesses in an action before him, he may not act in a dual capacity as judge and advocate; the presentation of a litigant's case in an adversary proceeding should be left to the initiative of counsel who has the responsibility to represent the interest of his client. *Oliver v. State*, 268 Ark. 579, 594 S.W.2d 261 (Ct. App. 1980).

Prior convictions may not be considered for purposes of the sentencing enhancement for subsequent convictions for driving while intoxicated unless the records shows the accused had counsel in the trials leading to the prior convictions or that the right to counsel was waived. *Southern v. State*, 284 Ark. 572, 683 S.W.2d 933 (1985).

This section specifically provides that an accused in a criminal prosecution shall enjoy the right to be heard by himself and his counsel and no sentence involving loss of liberty can be imposed where there has been a denial of counsel; furthermore, an accused is entitled to relief from a conviction whenever the proceedings indicate the unfairness of trial without the help of a lawyer. *Philyaw v. State*, 288 Ark. 237, 704 S.W.2d 608 (1986).

Where the trial court (i) removed defendant's public defender one month prior to trial, (ii) failed to sufficiently query defendant regarding his ability to pay for counsel, (iii) denied his motion for a continuance for the purpose of securing counsel, and (iv) required that defendant proceed at trial without counsel over his objection to proceeding pro se, the defendant was not improperly denied court appointed counsel but was improperly denied the

benefit of any counsel. *Beyer v. State*, 331 Ark. 197, 962 S.W.2d 751 (1998).

—Construction.

The use of the conjunction “and” between “himself” and “counsel” should not be interpreted as entitling a defendant to represent himself in part of the proceedings while accepting counsel’s representation in other parts; the decision of whether a defendant may make a portion of the closing arguments is best left to the sound discretion of the trial court in order that it may maintain order, prevent unnecessary consumption of time or other undue delay, and preserve dignity and decorum. *Sterling v. State*, 315 Ark. 598, 868 S.W.2d 490 (1994).

When a defendant invokes his Sixth Amendment right to counsel for a judicial proceeding unrelated to the present charge, but does not make any indication that he only wishes to deal with the police through counsel, he does not invoke his Fifth Amendment right to counsel; the Sixth Amendment right to counsel is case specific. *Olive v. State*, 340 Ark. 343, 10 S.W.3d 443 (2000).

An accused’s right to counsel after a prosecution has commenced is case specific and cannot be invoked once for all future prosecutions; therefore, defendant’s invocation of his right to counsel in the robbery case did not constitute an invocation of the right to counsel during his subsequent custodial interrogation regarding the murder. *Olive v. State*, 340 Ark. 343, 10 S.W.3d 443 (2000).

—Admission of Confession.

Where a defendant’s confession was inadmissible because of failure of the prosecution to show he had been advised of his right to counsel, it was error to admit in trial de novo in circuit court evidence that he had admitted making the confession in the previous trial in municipal court. *Anderson v. City of El Dorado*, 243 Ark. 137, 418 S.W.2d 801 (1967).

Where an officer was called to a disturbance at defendant’s home, the officer’s general question to defendant who had been hiding in the woods of “What’s up?” was a general term of salutation and was not designed to elicit an incriminating response; thus, defendant’s incriminating statements regarding incest, made in reply to the responding officer’s salutation,

were admissible. *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003).

—Appeal.

The fact that defendant’s attorney elected to abandon the appeal was not in itself cause to relieve him of his responsibility to provide defendant with effective assistance of counsel in an appeal where his attorney was the attorney most familiar with the case and in the best position to prepare the defendant’s brief, and should be required to do so. *Norman v. State*, 323 Ark. 444, 916 S.W.2d 724 (1996).

Defendant failed to cite any authority for his argument that, even if the appellate court found no Sixth Amendment violation for denial of counsel on appeal, there was still an Arkansas constitutional violation; although defendant pointed out that the Arkansas Constitution had different language than the Sixth Amendment, he failed to explain how this difference in language afforded him more protection. *McClina v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 530 (Oct. 9, 2003).

—Attorney Fees.

Payment of fees to attorneys representing indigents is a responsibility of the state which the legislature had delegated to the counties by statute; but where the delegating statute, § 16-92-108 (repealed), was declared invalid, the state was responsible for payment of attorney fees and expenses. *State v. Post*, 311 Ark. 510, 845 S.W.2d 487 (1993).

—Choice.

The rights of an accused to the assistance of counsel and to be heard by himself and his counsel do not confer an absolute choice of counsel, regardless of the circumstances. *Mann v. Britt*, 266 Ark. 100, 583 S.W.2d 21 (1979).

Where a trial court terminates the representation of an attorney, either private or appointed, over the defendant’s objection and under circumstances which do not justify the lawyer’s removal and which are not necessary for the efficient administration of justice, a violation of the accused’s right to particular counsel occurs. *Clements v. State*, 306 Ark. 596, 817 S.W.2d 194 (1991).

It is not inconsistent with a defendant’s right to counsel to limit such appoint-

ments to licensed attorneys. *Jones v. State*, 314 Ark. 383, 862 S.W.2d 273 (1993), cert. denied, 512 U.S. 1237, 114 S. Ct. 2743, 129 L. Ed. 2d 863 (1994).

—Conduct of Trial by Accused.

Defendant has a right to conduct his own defense in a criminal case, but this does not absolve him from observing rules of procedure therefore; he should make objection to a ruling of the court below in order to be able to raise the question on appeal. *Wimberly v. State*, 214 Ark. 930, 218 S.W.2d 730 (1949).

In a homicide prosecution where the defendant was represented by counsel and did not choose to testify, there was no error when the trial court refused to permit the defendant to make the final portion of the argument to the jury personally, after his counsel had made the initial portion of his closing argument. *Mosby v. State*, 249 Ark. 17, 457 S.W.2d 836 (1970).

Where defendant, on the morning of the trial, asked the court if he could represent himself, but coupled that request with a motion for a continuance in order to prepare his case and subpoena witnesses not present for trial, which the court denied, defendant, by not being prepared to proceed, waived his right to conduct his own defense, unless the court erred in denying his request for a continuance. *Nelson v. State*, 43 Ark. App. 68, 859 S.W.2d 658 (1993).

Where defendant elected to represent himself, the trial court was free to appoint standby counsel instead of granting access to a law library. *Rowbottom v. State*, 327 Ark. 76, 938 S.W.2d 224 (1997).

—Guilty Plea.

Acceptance of plea of guilty without giving or offering defendant benefit of counsel constitutes a denial of due process. *Swagger v. State*, 227 Ark. 45, 296 S.W.2d 204 (1956); *Dement v. State*, 236 Ark. 851, 370 S.W.2d 191 (1963); *MEEKS v. State*, 239 Ark. 1066, 396 S.W.2d 306 (1965).

—Oral Argument.

An accused has no constitutional right to have oral argument by counsel at the conclusion of an evidentiary hearing on a motion to suppress evidence. *Brenneman v. State*, 264 Ark. 460, 573 S.W.2d 47 (1978), cert. denied, 442 U.S. 931, 99 S. Ct. 2863, 61 L. Ed. 2d 299 (1979).

—Polygraph Test.

The district court's finding that there was no agreement between defendant's counsel and the prosecutor that polygraph test result would be admissible is not clearly erroneous; having failed to obtain an oral agreement from the prosecutor, defendant's counsel cannot be criticized for failing to reduce that agreement to writing, and without an agreement of any kind, the polygraph test results were clearly inadmissible. *Houston v. Lockhart*, 9 F.3d 62 (8th Cir. 1993).

—Post-Conviction Proceedings.

In criminal cases the accused has a constitutional right to counsel at trial; there is no corresponding right to counsel in a post-conviction proceeding. *Virgin v. Lockhart*, 288 Ark. 92, 702 S.W.2d 9 (1986).

—Presence of Counsel.

A verdict may be read in the absence of defendant's counsel, in the absence of a request that such counsel should be present. *Baker v. State*, 58 Ark. 513, 25 S.W. 603 (1894).

Counsel should have been present in a case where, during trial, defendant made a confession. *Garner v. State*, 97 Ark. 63, 132 S.W. 1010 (1910).

—Waiver.

The right to counsel is a personal right which the accused may knowingly and intelligently waive either at the pretrial stage or at trial. *Ridgeway v. State*, 239 Ark. 377, 389 S.W.2d 617 (1965), cert. denied, 382 U.S. 902, 86 S. Ct. 236, 15 L. Ed. 2d 156 (1965); *Slaughter v. State*, 240 Ark. 471, 400 S.W.2d 267 (1966); *Barnes v. State*, 258 Ark. 565, 528 S.W.2d 370 (1975); *Leak v. Graves*, 261 Ark. 619, 550 S.W.2d 179 (1977).

Where, in a prosecution for capital murder, the defendant voluntarily gave a confession after being advised of his rights and given an opportunity to engage an attorney, he knowingly and intelligently waived his right to counsel. *Rodgers v. State*, 261 Ark. 293, 547 S.W.2d 419 (1977).

Where a defendant was repeatedly advised of his rights during the course of interrogation but did not attempt to obtain counsel and recalled a prosecuting attorney who offered to obtain counsel for him, the defendant waived his right to

counsel. *Loomis v. State*, 261 Ark. 803, 551 S.W.2d 546 (1977).

The State may not force a defendant to accept counsel against his will or deny his request to conduct his own defense. Where the accused knowingly and intelligently declines the assistance of counsel and asserts his constitutional right to represent himself, the court should not interfere with the free exercise of that constitutional right. *Barnes v. State*, 15 Ark. App. 153, 691 S.W.2d 178 (1985).

The right to counsel is a personal right and the accused may knowingly and intelligently waive counsel either at a pretrial stage or at the trial; however, every reasonable presumption must be indulged against the waiver of fundamental constitutional rights. *Philyaw v. State*, 288 Ark. 237, 704 S.W.2d 608 (1986).

To establish a voluntary and intelligent waiver of the right to counsel, the trial judge must explain to the accused that he is entitled as a matter of law to an attorney and question him to see if he can afford to hire counsel; the judge must also explain the desirability of having the assistance of an attorney during the trial and the problems attendant to one representing himself. *Philyaw v. State*, 288 Ark. 237, 704 S.W.2d 608 (1986).

Where the attorney testified he did not remember whether he told the defendant he could keep him as his attorney, and the record did not reveal that the trial judge ever so informed the defendant, the defendant's act in releasing the attorney could not be viewed as a waiver of a right to counsel. *Philyaw v. State*, 288 Ark. 237, 704 S.W.2d 608 (1986).

A defendant who invokes his right to counsel before trial by retaining an attorney or accepting appointment of counsel may be found to have waived his right to self representation at trial and also in pretrial proceedings. *Monts v. Lessenberry*, 305 Ark. 202, 806 S.W.2d 379 (1991).

Where defendant never had counsel, there was no evidence that the trial court made defendant aware of the dangers and disadvantages of self-representation, and there was no one sitting by to assist defendant if necessary, defendant did not forfeit her right to counsel. *Pendleton v. State*, 49 Ark. App. 67, 896 S.W.2d 600 (1995).

—Withdrawal.

When an accused appears with retained counsel, the trial judge should not allow the attorney of record to withdraw until: (1) new counsel has been retained; or (2) a showing of indigency has been made and counsel has been appointed; or (3) a voluntary and intelligent waiver of the right to counsel is established on the record. *Philyaw v. State*, 288 Ark. 237, 704 S.W.2d 608 (1986).

While defendant's motion to relieve his attorney of record did set forth certain differences between himself and his counsel regarding the fee arrangement, it did not expressly state that his attorney's representation was compromised by a conflict of interest; in denying the motions, the circuit court considered the length of time the matter had been pending and the proximity of the trial date, and the appellate court would not rank speculation about whether counsel was hampered or impaired in any respect by a purported conflict of interest. *Bullock v. State*, 353 Ark. 577, 111 S.W.3d 380 (2003).

Right to Trial by Jury.

The trial court was without authority to impose additional sentence authorized by statute on conviction of felony while armed with a firearm where the jury had made no specific finding as to that effect, and the imposition of the additional sentence deprived the defendant of his right to a trial by jury. *Johnson v. State*, 249 Ark. 208, 458 S.W.2d 409 (1970).

The presence of a thirteenth person serving as an interpreter for a deaf juror during jury deliberations would violate the secrecy of the jury room and thereby deprive an accused person of his right to trial by jury. *Eckstein v. Kirby*, 452 F. Supp. 1235 (E.D. Ark. 1978).

Procedural rules governing jury trials are not intended to diminish the right to a jury trial; these rules should be interpreted so as not to give effect to dubious waivers of rights and to hold otherwise would be to hold that a rule of appellate procedure supersedes an express provision of the constitution. *Winkle v. State*, 310 Ark. 713, 841 S.W.2d 589 (1992).

—Jury Selection.

Jury selection is a stage of the proceedings where openness is particularly appropriate under the guarantee of a public

trial provided for in U.S. Const. Amend. 6, this section, and § 16-10-105. *Memphis Publishing Co. v. Burnett*, 316 Ark. 176, 871 S.W.2d 359 (1994).

The drawing of a venire panel entirely from the Osceola District of Mississippi County and the exclusion of the Chickasawba District of Mississippi County did not violate the defendant's asserted constitutional right to have a jury selected from the entire county since there was a legislative provision providing that the county was a multi-judicial-district county. *Britt v. State*, 334 Ark. 142, 974 S.W.2d 436 (1998).

—Juvenile Court.

The accused in a criminal prosecution has a right to a trial by a jury, but a minor does not have such a right in juvenile court. *Martin v. State*, 213 Ark. 507, 211 S.W.2d 116 (1948).

—Punishment.

This section and Ark. Const., Art. 2, §§ 7 and 21 are not to be interpreted to prevent a court from fixing punishment in certain cases. *Tharp v. State*, 294 Ark. 615, 745 S.W.2d 612 (1988).

Speedy Trial.

A prisoner, to be entitled to discharge on delay of the trial, must demand trial or resist postponement. *Stewart v. State*, 13 Ark. 720 (1853) (decision under prior Constitution); *Dilliard v. State*, 65 Ark. 404, 46 S.W. 533 (1898); *Fox v. State*, 102 Ark. 393, 144 S.W. 516 (1912).

A statute attempting to suspend all law suits for the duration of the Civil War violated the constitutional provision for a speedy trial. *Burt v. Williams*, 24 Ark. 91 (1863) (decision under prior Constitution).

This section, providing for a speedy and public trial by an impartial jury and for a change of venue within the judicial district, adequately protects petitioner's constitutional rights to a fair and impartial trial. *Rand v. Arkansas*, 191 F. Supp. 20 (W.D. Ark. 1961).

The right to a speedy trial does not mean that all other business of the court must be shoved to the back in order to give an immediate trial. *Moore v. State*, 241 Ark. 335, 407 S.W.2d 744 (1966).

The 18-month period set for a speedy trial is reasonable and is consistent with constitutional standards. *Jennings v. State*, 276 Ark. 217, 633 S.W.2d 373, cert.

denied, 459 U.S. 862, 103 S. Ct. 137, 74 L. Ed. 2d 117 (1982).

—Appeal from Motion to Dismiss.

There is no authority for an interlocutory appeal of the denial of a motion to dismiss for lack of a speedy trial. *Gammel v. State*, 318 Ark. 880, 890 S.W.2d 240 (1994).

—Condemned Prisoner.

The Bill of Rights does not guarantee to a condemned prisoner the right to be tried upon pending charges while he is an occupant of the death cell, awaiting electrocution. *Leggett v. Kirby*, 231 Ark. 576, 331 S.W.2d 267, cert. denied, 362 U.S. 981, 80 S. Ct. 1073, 4 L. Ed. 2d 1018 (1960).

—Delay.

The provision in the Bill of Rights relating to a speedy trial does not apply rigidly to every instance of delay in criminal cases. The Constitution prohibits vexatious, capricious and oppressive delays, manufactured by the ministers of justice. *Leggett v. Kirby*, 231 Ark. 576, 331 S.W.2d 267, cert. denied, 362 U.S. 981, 80 S. Ct. 1073, 4 L. Ed. 2d 1018 (1960).

Where codefendant had been in jail for five months before trial and the law enforcement officers possessed a record sheet showing that he had been a patient at a state hospital in Whitfield, Miss., no overwhelming necessity justified trial court in declaring a mistrial in order to commit the codefendant to state hospital for observation; therefore, appellants were entitled to dismissal of charges on ground of double jeopardy. *Cody v. State*, 237 Ark. 15, 371 S.W.2d 143 (1963).

Where, due to overcrowded docket, defendant remained in jail more than seven months without trial in a three division circuit court, the court refused to hold that the trial court abused its discretion in denying defendant's motion to dismiss but noted it was difficult to consider a trial after such delay a speedy trial as guaranteed by this section. *Gardner v. State*, 252 Ark. 828, 481 S.W.2d 342 (1972).

—Defendant Causing.

Suspension of seduction prosecution because of the marriage of defendant to prosecuting witness is not violation of constitutional right to speedy trial where prosecution subsequently is reinstated. *Burnett v. State*, 76 Ark. 295, 88 S.W. 956 (1905).

A statutory exception makes the speedy trial proviso inapplicable if the accused applies for trial delay. *Fields v. State*, 246 Ark. 1249, 441 S.W.2d 803 (1969).

Statutes and rules applied to deny a motion to dismiss brought by a defendant who had resisted every attempt to bring him to trial were not unconstitutional under this section as denials of the right to speedy trial. *Faulk v. State*, 261 Ark. 543, 551 S.W.2d 194, appeal dismissed, 434 U.S. 804, 98 S. Ct. 33, 54 L. Ed. 2d 62 (1977).

Where a case was set for trial well within the time allowed, but was delayed to allow the defendant to obtain new counsel after his assault on his original counsel led them to withdraw, there was no denial of a speedy trial. *Foxworth v. State*, 263 Ark. 549, 566 S.W.2d 151 (1978).

—Federal Offenses.

Defendant's trial for four crimes allegedly committed while he was on furlough from a forty-year sentence in the Arkansas Department of Corrections did not violate the speedy trial rule because of the excludable delay caused by defendant's arrest and trial on federal charges. *Patterson v. State*, 318 Ark. 358, 885 S.W.2d 667 (1994).

—State Causing.

To prevent discharge of accused on the grounds that he has been denied a speedy trial by the state, the state must show good cause for failure to gain custody over the accused and afford him a speedy trial. *Randall v. State*, 249 Ark. 258, 458 S.W.2d 743 (1970).

—Mistrial.

Where the defendant's attorney requested and was granted a mistrial and the defendant, after the jury had been discharged, asked that a mistrial not be declared, the denial of such request did not deny the defendant's right to a speedy trial since the time ran anew after the declaration of mistrial. *Walker v. State*, 262 Ark. 331, 556 S.W.2d 655 (1977).

—Motion to Dismiss.

A municipal court speedy trial violation motion to dismiss pursuant to ARCrP 30.1(a) may be raised in a de novo circuit court proceeding even though ARCrP 28.1 only refers to trial in a circuit court. *Whittle v. Washington County Circuit Court*, 325 Ark. 136, 925 S.W.2d 383 (1996).

Venue.

The rights of a defendant may be dealt with only in the circuit court of the county in which the indictment was returned or the information filed where there has been no change of venue. *Sims v. State*, 203 Ark. 976, 159 S.W.2d 753 (1942).

—Accessories.

Action against accessory for theft in another county was properly brought in county where crime occurred as the distinction between accessories and principals is abolished and the accessory's crime is in the county where the theft occurred. *State v. Reeves*, 246 Ark. 1187, 442 S.W.2d 229 (1969).

—Apprehension With Stolen Property.

A thief may be prosecuted in any county of the state into which property stolen by him in another state is brought, but not a person who merely received the stolen goods in another state. *State v. Johnson*, 38 Ark. 568 (1882); *Wilson v. State*, 97 Ark. 412, 134 S.W. 623 (1911).

—Bad Check Crimes.

Where a building contractor issued a payroll check upon a bank in Little Rock, Pulaski County, to an employee who took it to Garland County and deposited it in a bank; and the check was returned with a notation "insufficient funds," the violation of the Overdraft Act was consummated when the check was executed and delivered in Pulaski County and the venue was not transitory. *Edwards v. State*, 232 Ark. 403, 337 S.W.2d 865 (1960).

—Bigamy.

An indictment for bigamy must be found in the county in which the bigamous marriage occurred. *Walls v. State*, 32 Ark. 565 (1877).

—Change.

The judge of the circuit court could not remove a criminal cause to another county without application of the defendant. *Osborn v. State*, 24 Ark. 629 (1867) (decision under prior Constitution).

Where a defendant makes a proper application for change of venue, he is entitled to removal to another county in the judicial circuit and is not restricted to another district of the same county. *State v. Flynn*, 31 Ark. 35 (1876); *Wells v. State*, 53 Ark. 211, 13 S.W. 737 (1890).

In a criminal case, when a petition for change of venue and supporting affidavits are in order, the only inquiry upon which the trial court may enter is as to the qualifications of the supporting witnesses. *Wells v. State*, 53 Ark. 211, 13 S.W. 737 (1890).

The discretion of the trial court in passing on a motion for a change of venue will not be disturbed on appeal unless there is an abuse of this discretion. *Bailey v. State*, 204 Ark. 376, 163 S.W.2d 141 (1942); *Robertson v. State*, 212 Ark. 301, 206 S.W.2d 748 (1947).

Petitioner's anticipation of difficulties in obtaining a fair and impartial trial because of inflamed public sentiment is a question of fact to be determined by the trial court having jurisdiction to try the offense with which she is charged and, thus, is not a ground for removal from the state court. *Rand v. Arkansas*, 191 F. Supp. 20 (W.D. Ark. 1961).

Where the trial court determines a defendant cannot receive a fair trial, it has the power to remove the case to some county in an adjoining judicial circuit. *Cockrell v. Dobbs*, 238 Ark. 348, 381 S.W.2d 756 (1964); *Anderson v. State*, 278 Ark. 171, 644 S.W.2d 278 (1983); *Simmons v. Lockhart*, 814 F.2d 504 (8th Cir. 1987), cert. denied, 485 U.S. 1015, 108 S. Ct. 1489, 99 L. Ed. 2d 717 (1988).

There was no error in the court's failure to grant a change of venue to a Negro defendant because of an alleged race riot taking place in the county seat where the defendant did not move for a change of venue and the record was silent as to the existence of a race riot or other type of public disturbance. *Scott v. State*, 249 Ark. 967, 463 S.W.2d 404 (1971).

Where the site of the murder trial could have been changed to any courthouse in the district where the defendants would have been more likely to have received a more fair and impartial trial, the trial court abused its discretion in refusing to grant the motion for a change of venue. *Ruiz v. State*, 265 Ark. 875, 582 S.W.2d 915 (1979), cert. denied, 454 U.S. 1093, 102 S. Ct. 659, 70 L. Ed. 2d 631 (1981).

Statutes permitting only one change of venue, and then only to a county within the judicial district, are not on their face unconstitutional. *Swindler v. State*, 267 Ark. 418, 592 S.W.2d 91 (1979), cert. de-

nied, 449 U.S. 1057, 101 S. Ct. 630, 66 L. Ed. 2d 511 (1980).

In capital felony murder trial, where court granted motion for change of venue and moved trial to county adjacent to the one in which the crime occurred, and where two codefendants were tried in other counties of the judicial district and the only other forum available was closer to the scene of the crime than the court's choice of venue, defendant was not prejudiced by counsel's failure to move for another change of venue. *Pickens v. Lockhart*, 714 F.2d 1455 (8th Cir. 1983).

Trial court's denial of motion for change of venue was not error where, although the crime took place in the only two counties in the judicial circuit, the court also determined that the publicity concerning the case was not so overwhelming and prejudicial that the defendant could not receive a fair trial in the county in which he was tried. *Simmons v. Lockhart*, 814 F.2d 504 (8th Cir. 1987), cert. denied, 485 U.S. 1015, 108 S. Ct. 1489, 99 L. Ed. 2d 717 (1988).

Section 16-88-207, which purports to limit a criminal defendant to one charge of venue, is not unconstitutional on its face. As with this section of the constitution, the statute can, and must, be read as operative only within the bounds of the sixth and fourteenth amendments to the United States Constitution. *Swindler v. Lockhart*, 693 F. Supp. 760 (E.D. Ark. 1988), aff'd, 885 F.2d 1342 (8th Cir. 1989), cert. denied, 495 U.S. 911, 110 S. Ct. 1938, 109 L. Ed. 2d 301 (1990).

Defendant's change-of-venue motion alleging adverse pretrial publicity was properly denied in light of the testimony introduced at the hearing which showed less-than-pervasive publicity, the failure of defendant to demonstrate during voir dire that there were publicity-affected jurors, and the fact that he did not use all his peremptory challenges. *Rankin v. State*, 329 Ark. 379, 948 S.W.2d 397 (1997).

The constitution provides that a defendant's right to be tried in the county where the crime was committed is qualified by his right to apply for a change of venue "in such a manner as now is, or may be, prescribed by law" and, thus, contemplates that the manner by which venue may be changed will be determined by legislative enactment. *Dansby v. State*, 338 Ark. 697, 1 S.W.3d 403 (1999).

The trial court complied with this section of the Arkansas Constitution and § 16-88-203 when it acted upon the defendant's first request for a change of venue and transferred venue to another county; although the defendant labeled his second motion as a motion to withdraw the earlier request for a change of venue, it was actually nothing more than a request for a second change of venue and, therefore, was discretionary with the trial judge. *Dansby v. State*, 338 Ark. 697, 1 S.W.3d 403 (1999).

—Concurrent Jurisdiction.

A statute which provided that, where offenses were committed on the boundary of two counties, the indictment and trial may be in either, was constitutional. *State v. Rhoda*, 23 Ark. 156 (1861) (decision under prior Constitution).

Where two states have concurrent jurisdiction over a boundary river, an indictment found in the county adjoining the river, for a crime committed on the river, does not violate the Constitution. *Brown v. State*, 109 Ark. 373, 159 S.W. 1132 (1913).

—Judicial Districts.

An act dividing county into districts and providing for selection of jury for a trial entirely from one district does not violate right of trial by jury from the county where crime committed. *Walker v. State*, 35 Ark. 386 (1880); *Potter v. State*, 42 Ark. 29 (1883); *Terry v. State*, 149 Ark. 462, 233 S.W. 673 (1921).

An act dividing a county into two judicial districts does not divide the county into two counties. A change of venue may remove the cause from the county entirely. *Williams v. State*, 160 Ark. 587, 255 S.W. 314 (1923).

—Jurisdiction.

The legislature cannot invest a court with jurisdiction of crimes committed beyond the limits of the county. *Dougan v. State*, 30 Ark. 41 (1875).

The venue in a criminal case is jurisdictional and must be proved by the state. *Ward v. State*, 77 Ark. 19, 90 S.W. 619 (1905).

State must prove and stipulate jurisdiction over island lying in the Mississippi River. *Means v. State*, 118 Ark. 362, 176 S.W. 309 (1915).

Before the state is called upon to offer any evidence of jurisdiction, there must be

positive evidence that the offense occurred outside the jurisdiction of the court. *Nicholson v. State*, 319 Ark. 566, 892 S.W.2d 507 (1995).

Nothing in the Arkansas Constitution or Code dealing directly with the place in which misdemeanor charges must be tried limits it to the city in which the court sits; the territorial jurisdiction of municipal courts extends throughout the counties in which they sit. *State v. Webb*, 323 Ark. 80, 913 S.W.2d 259 (1996), *supp. op.*, 323 Ark. 87A, 920 S.W.2d 1 (1996).

—Presumption.

Statute which provided a presumption that the offense charged was committed within jurisdiction of the court did not violate the venue provision of the Constitution; consequently, in the absence of evidence that escape from penitentiary occurred in a county other than that in which the penitentiary was located, proper venue was in that county, although prisoner had been furloughed to go to another county. *Lyons v. State*, 250 Ark. 920, 467 S.W.2d 701 (1971).

Where the statute provides for the presumption of venue unless the evidence affirmatively shows otherwise, the State was not required in its case-in-chief to prove that the trial was being held in the county in which the crime was committed. *James v. State*, 280 Ark. 359, 658 S.W.2d 382 (1983); *Baggett v. State*, 15 Ark. App. 113, 690 S.W.2d 362 (1985).

Witnesses.

—Attendance.

The legislature may make reasonable laws regulating the use of compulsory process of witnesses for defendant, but a reasonable time must be allowed for making the process effectual. *Graham v. State*, 50 Ark. 161, 6 S.W. 721 (1887).

The effect of allowing the substitution of an affidavit for a witness is to deny the accused the constitutional right to compel the attendance of witnesses. *Graham v. State*, 50 Ark. 161, 6 S.W. 721 (1887).

Where material witnesses within court's jurisdiction were absent because of illness, a court should have granted a continuance. *Price v. State*, 71 Ark. 180, 71 S.W. 948 (1903); *Jones v. State*, 99 Ark. 394, 138 S.W. 967 (1911).

Where the authority of the court has been properly invoked, an accused is enti-

tled to compulsory process to secure attendance of witnesses, including the right to delay trial. *Carter v. State*, 196 Ark. 746, 119 S.W.2d 913 (1938).

This provision does not require that every witness who has knowledge of relevant facts testify and the establishment of the elements of the crime by the testimony of witnesses other than the victim or accuser does not constitute a variance from an indictment naming the victim. *Hoover v. State*, 262 Ark. 856, 562 S.W.2d 55 (1978).

In second-degree murder prosecution, defendant was not entitled to indefinite continuance, nor to have State admit veracity of hearsay statement of unavailable witness, where the State had tried and failed to locate the witness and there was no basis for believing that she would ever be located. *Doles v. State*, 280 Ark. 299, 657 S.W.2d 538 (1983).

Where defendant sought to have the trial judge recused, it was clear that defendant was simply hoping that the subpoenaed witnesses would provide helpful testimony, but this fell short of the required showing that the testimony would have been "both material and favorable to defendant's case"; therefore, defendant showed no prejudice from the trial court's decision not to order the witnesses's appearance and testimony. *Holder v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 525 (Oct. 9, 2003).

—Confrontation.

The recognizance of witness in a felony case may be taken in the absence of the defendant. *Bolling v. State*, 54 Ark. 588, 16 S.W. 658 (1891).

Where accomplice made a cross-implicating confession and the one implicated was not confronted by his accomplice, it was error. *Barnes v. State*, 215 Ark. 781, 223 S.W.2d 503 (1949); *Kerr v. State*, 256 Ark. 738, 512 S.W.2d 13 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 783, 42 L. Ed. 2d 806 (1975).

Permitting a physician from the State Hospital to testify with reference to a report compiled by him and other members of the hospital staff does not violate defendant's right to be confronted by witnesses against him. *Downs v. State*, 231 Ark. 466, 330 S.W.2d 281 (1959).

Where the victim positively and un-

equivocally identified the defendant and pointed the finger at him before the jury and in the course of the trial, the identification at the trial complied with all rules of confrontation because there was actual confrontation and also cross examination of witness at the trial. *French v. State*, 231 Ark. 677, 331 S.W.2d 863 (1960).

This provision assures an accused the right of confrontation by witnesses against him, but does not require the appearance of the true owner of property alleged to have been stolen or illegally taken by him, whether the owner is named in the indictment or information or not. *Hoover v. State*, 262 Ark. 856, 562 S.W.2d 55 (1978).

There was no constitutional violation when the trial court allowed the child witnesses in a sexual molestation case to testify while sitting in a witness chair that faced outside of defendant's line of sight, and while they did not have to look at the defendant while they testified, they were not precluded from doing so. *Smith v. State*, 340 Ark. 116, 8 S.W.3d 534 (2000).

Confrontation of a witness does not mean in whatever way and to whatever extent a defendant might wish. *Smith v. State*, 340 Ark. 116, 8 S.W.3d 534 (2000).

—Bail Hearing Testimony.

The testimony of a witness at a hearing of application for bail, given in presence of the defendant, may be read on final trial if the witness is out of jurisdiction or can not be found. *Sneed v. State*, 47 Ark. 180, 1 S.W. 68 (1886).

—Committing Magistrate Testimony.

The testimony of a witness before a committing magistrate, where defendant had the opportunity of cross-examination, may be read as secondary evidence. *Hurley v. State*, 29 Ark. 17 (1874); *Dolan v. State*, 40 Ark. 454 (1883).

—Cross-Examination.

The right to cross-examine prosecution's witnesses is not unlimited. *Bowden v. State*, 301 Ark. 303, 783 S.W.2d 842 (1990).

To determine where restrictions placed on the right to cross-examine a witness rise to the level of a constitutional deprivation, a reviewing court must look "to the record as a whole" and resolve whether

the restrictions imposed by the trial court on defendant's cross-examination created a substantial danger of prejudice by depriving defendant of a meaningful opportunity to elicit available, relevant information that was likely to effectively impeach the credibility of the witness. *Bowden v. State*, 301 Ark. 303, 783 S.W.2d 842 (1990).

It is generally permissible for an accused to show by cross-examination anything bearing on the bias of the testimony of a material witness. *Billett v. State*, 317 Ark. 346, 877 S.W.2d 913 (1994).

The right of an accused to show the bias of a witness does not lie within the trial court's discretion; however, once the main circumstances showing bias have been admitted, the trial judge does have the discretion to determine how far the examiner may delve into the details. *Billett v. State*, 317 Ark. 346, 877 S.W.2d 913 (1994).

The trial court may impose reasonable limits on cross-examination based upon concerns about harassment, prejudice, waste of time, unnecessary duplication of testimony, confusion of issues, or interrogation that is repetitive or only marginally relevant. *Billett v. State*, 317 Ark. 346, 877 S.W.2d 913 (1994).

—Deceased Witness.

The testimony of a deceased witness on a former trial could be proved on a second trial for the same offense. *Pope v. State*, 22 Ark. 372 (1860) (decision under prior Constitution); *Green v. State*, 38 Ark. 304 (1881).

—Examining Court Testimony.

Evidence of the testimony of a witness before an examining court, where the defendant had the opportunity of cross-examination, is admissible where the witness is no longer available. *Shackelford v. State*, 33 Ark. 539 (1878); *Butler v. State*, 83 Ark. 272, 103 S.W. 382 (1907); *Walls v. State*, 194 Ark. 578, 109 S.W.2d 143 (1937).

—Former Trial Testimony.

The testimony of a witness given in a former trial may be admitted in evidence where the witness is out of the state. A witness is competent to testify as to the testimony of another witness on former trial, although unable to give his exact

words. *Vaughan v. State*, 58 Ark. 353, 24 S.W. 885 (1894).

Use of testimony from defendant's bond revocation hearing at his trial violated his right to confrontation because his counsel did not have the same motive and opportunity to develop the testimony at the revocation hearing as at trial; since the revocation hearing was not an adversarial proceeding and the liberty interest at stake was not equivalent. *Proctor v. State*, 76 Ark. App. 48, 60 S.W.3d 486 (2001).

—Grand Jury Testimony.

Court may not permit the written statement of a witness made before the grand jury to be read in evidence at the trial without permission of defendant. *Hinson v. State*, 109 Ark. 359, 159 S.W. 1126 (1913).

—Physical Evidence.

A statute which permits the introduction of evidence of the general reputation of a building or place where a nuisance is alleged to exist to prove the existence of the nuisance is constitutional. *Foley v. State*, 200 Ark. 521, 139 S.W.2d 673 (1940).

An accused has no right to be confronted with physical evidence. *Redman v. State*, 265 Ark. 774, 580 S.W.2d 945 (1979).

Defendants' constitutional right to confront witnesses against them was not violated by the failure of the police to preserve the breath samples taken from them. *Southern v. State*, 284 Ark. 572, 683 S.W.2d 933 (1985); *Johnston v. City of Fort Smith*, 15 Ark. App. 102, 690 S.W.2d 358 (1985).

—Record of Prior Convictions.

The introduction of a copy of the defendant's record of prior convictions which was certified by the custodian of the records, in the absence of the custodian, did not violate the defendant's right of confrontation. *Montgomery v. State*, 277 Ark. 95, 640 S.W.2d 108 (1982).

—Video Depositions.

The use of video deposition testimony at trial did not violate the defendant's constitutional right to be confronted with the witnesses against him where the court found that the use of the video deposition was necessary because the witness was

unavailable to testify in person and noted the witness had already been flown back from Africa twice for the trial. *Hale v. State*, 343 Ark. 62, 31 S.W.3d 850 (2000), cert. denied, 532 U.S. 1039, 121 S. Ct. 2001, 149 L. Ed. 2d 1003 (2001).

—Waiver.

Presence of a witness was waived where the defendant allowed the reading of the witness' statement before the examining magistrate, objecting thereto without stating the grounds. *Wells v. State*, 16 S.W. 577 (Ark. 1892).

Cited: *Shipley v. State*, 50 Ark. 49, 6 S.W. 226 (1887); *Ware v. State*, 159 Ark. 540, 252 S.W. 934 (1923); *Veatch v. State*, 221 Ark. 44, 251 S.W.2d 1015 (1952); *Pellegrini v. Wolfe*, 225 Ark. 459, 283 S.W.2d 162 (1955); *Bailey v. State*, 229 Ark. 74, 313 S.W.2d 388, cert. denied, 358 U.S. 869, 79 S. Ct. 101, 3 L. Ed. 2d 101 (1958); *Froman v. State*, 232 Ark. 697, 339 S.W.2d 601 (1960); *Hopper v. Wolfe*, 238 Ark. 932, 385 S.W.2d 783 (1965); *Hill v. State*, 253 Ark. 512, 487 S.W.2d 624 (1972); *Ellingburg v. State*, 254 Ark. 199, 492 S.W.2d 904 (1973); *Roach v. State*, 255 Ark. 773, 503 S.W.2d 467 (1973); *Williams v. Turner*, 255 Ark. 907, 503 S.W.2d 901 (1974); *Cotton v. State*, 256 Ark. 527, 508 S.W.2d 738 (1974); *Williams v. State*, 258 Ark. 207, 523 S.W.2d 377 (1975); *Hutcherson v. State*, 262 Ark. 535, 558 S.W.2d 156 (1977); *Faulk v. Mabry*, 600 F.2d 172 (8th Cir. 1979); *Meyers v. State*, 271 Ark. 886, 611 S.W.2d 514 (1981); *Rowe v. State*, 275 Ark. 37, 627 S.W.2d 16 (1982); *Wilson v. City of Pine Bluff*, 6 Ark. App. 286, 641 S.W.2d 33 (1982); *Wilson v. City of Pine Bluff*, 278 Ark. 65, 643 S.W.2d 569 (1982); *Knappenberger v. State*, 278 Ark. 382, 647 S.W.2d 417 (1983); *Boone v. State*, 282 Ark. 274, 668 S.W.2d 17 (1984);

Lovell v. State, 283 Ark. 425, 678 S.W.2d 318 (1984); *Williams v. State*, 289 Ark. 443, 711 S.W.2d 825 (1986); *Lowe v. State*, 290 Ark. 37, 716 S.W.2d 1 (1986); *Ellison v. Langston*, 290 Ark. 238, 718 S.W.2d 446 (1986); *Rock v. Arkansas*, 483 U.S. 44, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987); *Allen v. State*, 294 Ark. 209, 742 S.W.2d 886 (1988); *Horn v. State*, 294 Ark. 464, 743 S.W.2d 814 (1988); *City of Springdale v. Jones*, 295 Ark. 129, 747 S.W.2d 98 (1988); *Griffin v. State*, 297 Ark. 208, 760 S.W.2d 852 (1988); *Shaw v. State*, 299 Ark. 474, 773 S.W.2d 827 (1989); *Edwards v. City of Conway*, 300 Ark. 135, 777 S.W.2d 583 (1989); *Pilcher v. State*, 303 Ark. 335, 796 S.W.2d 845 (1990); *Brooks v. State*, 36 Ark. App. 40, 819 S.W.2d 288 (1991); *Lewis v. State*, 309 Ark. 392, 831 S.W.2d 145 (1992); *Turbyfill v. State*, 312 Ark. 1, 846 S.W.2d 646 (1993); *Sexson v. Municipal Court*, 312 Ark. 261, 849 S.W.2d 468 (1993); *Clements v. State*, 312 Ark. 528, 851 S.W.2d 422 (1993); *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994); *Sanders v. State*, 317 Ark. 328, 878 S.W.2d 391 (1994); *State v. Roberts*, 321 Ark. 31, 900 S.W.2d 175 (1995); *Cigainero v. State*, 321 Ark. 533, 906 S.W.2d 282 (1995); *Cook v. State*, 321 Ark. 641, 906 S.W.2d 681 (1995); *Kemp v. State*, 324 Ark. 178, 919 S.W.2d 943 (1996); *Burton v. State*, 327 Ark. 65, 937 S.W.2d 634 (1997); *Ford v. Wilson*, 327 Ark. 243, 939 S.W.2d 258 (1997); *Johnson v. State*, 328 Ark. 526, 944 S.W.2d 115 (1997); *Cates v. State*, 329 Ark. 585, 952 S.W.2d 135 (1997); *McDole v. State*, 339 Ark. 391, 6 S.W.3d 74 (1999); *Ridling v. State*, 348 Ark. 213, 72 S.W.3d 466 (2002); *Davis v. State*, 81 Ark. App. 17, 97 S.W.3d 921 (2003); *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

§ 11. Habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended; except by the General Assembly, in case of rebellion, insurrection or invasion, when the public safety may require it.

RESEARCH REFERENCES

Ark. L. Rev. Post-Conviction Relief in Arkansas, 24 Ark. L. Rev. 57.

UALR L.J. Survey of Arkansas Law: Constitutional Law, 4 UALR L.J. 179.

CASE NOTES

ANALYSIS

Absolute right.
Appeal.
Appeal.
Circuit court.
Guardian and ward.
Time to file petition.

Absolute Right.

A habeas corpus could issue, upon proper showing, to the party injured if he was of majority, or to his guardian, if he was a minor, wherever there was an unlawful restraint of the personal liberty. *Wright v. Johnson*, 5 Ark. 687 (1844) (decision under prior Constitution).

Appeal.

The Supreme Court of Arkansas does not have the jurisdiction to review an order of the county court on a writ of certiorari in a habeas corpus proceeding; the remedy is by appeal to the circuit court. *Ex parte Dame*, 162 Ark. 382, 259 S.W. 754 (1923).

Appeal.

Where petitioner raised a valid claim of an illegal suspended sentence for delivery of a controlled substance, for which the circuit court entered a judgment of revocation years later and then imposed the suspended sentence, the circuit court's order denying petitioner's request for a writ of habeas corpus was reversed since detention for an illegal period of time was precisely what a writ of habeas corpus was designed to correct. *Taylor v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 537 (Oct. 16, 2003).

§ 12. Suspension of laws.

No power of suspending or setting aside the law or laws of the State, shall ever be exercised, except by the General Assembly.

RESEARCH REFERENCES

UALR L.J. Sallings, Survey of Arkansas Law, 3 UALR L.J. 277.

Circuit Court.

A judge of the circuit court had the power to hear a habeas corpus petition. *Wright v. Johnson*, 5 Ark. 687 (1844) (decision under prior Constitution).

The circuit judge had the highest duty to award a habeas corpus to try the illegal imprisonment of a ward and, if found unnecessarily restrained of her liberty, of restoring the ward's person to the possession and custody of the guardian. *Wright v. Johnson*, 5 Ark. 687 (1844) (decision under prior Constitution).

The Supreme Court of Arkansas should issue a writ of mandamus to a circuit judge to determine a habeas corpus where he refused wrongfully to do so. *Wright v. Johnson*, 5 Ark. 687 (1844) (decision under prior Constitution).

Guardian and Ward.

Upon petition by a guardian to a circuit judge showing that the ward was illegally restrained within the circuit, a habeas corpus should be awarded to bring the ward before the judge. *Wright v. Johnson*, 5 Ark. 687 (1844) (decision under prior Constitution).

Time to File Petition.

There is no time limit on pursuing a writ of habeas corpus; a time limit would contravene the proscription against suspending the right to habeas corpus. *Renshaw v. Norris*, 337 Ark. 494, 989 S.W.2d 515 (1999).

Cited: *Bailey v. State*, 229 Ark. 74, 313 S.W.2d 388 (1958); *May v. Barg*, 276 Ark. 199, 633 S.W.2d 376 (1982).

CASE NOTES

ANALYSIS

Executive clemency.
Regulation of practice of law.

Executive Clemency.

The power of the governor to grant clemency is limited to individuals under sentence for a crime, penalty, or forfeiture, and does not extend to the granting of general amnesty, nor relief from civil penalties and forfeitures. *Hutton v. McCleskey*, 132 Ark. 391, 200 S.W. 1032 (1918).

§ 13. Redress of wrongs.

Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.

RESEARCH REFERENCES

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 620 et seq.

Ark. L. Rev. Note, *Attwood v. Estate of Attwood: A Partial Abrogation of the Parental Immunity Doctrine*, 36 Ark. L. Rev. 451.

Note, *Altered or Absent Evidence: The Tort of Spoliation: Wilson v. Beloit Corp.*, 43 Ark. L. Rev. 453.

Regulation of Practice of Law.

Authority of court in regulating the practice of law includes the preparation of rules determining and setting out the qualifications of one who desires to take the bar examination. *In re Pitchford*, 265 Ark. 752, 581 S.W.2d 321 (1979), cert. denied, 444 U.S. 863, 100 S. Ct. 131, 62 L. Ed. 2d 85, rehearing denied, 444 U.S. 975, 100 S. Ct. 131, 62 L. Ed. 2d 85 (1979).

Killenbeck, And Then They Did ... ? Abusing Equity in the Name of Justice, 44 Ark. L. Rev. 235.

C.J.S. 16D C.J.S., Constitutional Law, § 1428 et seq.

UALR L.J. Sullivan, *The Need for a Business or Payroll Records Affidavit for Use in Child Support Matters*, 11 UALR L.J. 651.

CASE NOTES

ANALYSIS

In general.
Alienation of affections.
Arbitration.
Claims against public officers and employees.
Common law rights.
Court costs.
Damages.
Elections.
Guest statutes.
Limitation on right.
Medical injuries.
Mental anguish.
Political rights.
Prompt redress.
Right to trial.
Sovereign immunity.
Standing.

Urban renewal plan.

In General.

This section is a part of the Bill of Rights, and is a guarantee of rights, and not a restriction on the power of the legislature to enact remedial laws. *Peugh v. Oliger*, 233 Ark. 281, 345 S.W.2d 610 (1961), overruled on other grounds, *Fountain v. Chicago, R.I. & P. Ry.*, 243 Ark. 947, 422 S.W.2d 870 (1968).

Statute which has as its purpose or effect the denial of the right of a citizen to free and untrammelled access to the courts or which seeks by intimidation, vexation, or otherwise to discourage the exercise of that right is unconstitutional. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

Alienation of Affections.

This section, without further legislation, does not give a divorced husband a right of action for the benefit of a child of the marriage for the alienation of affections of the child and wife from the husband, or the loss by the child of the security of a home life, against the alienator. *Lucas v. Bishop*, 224 Ark. 353, 273 S.W.2d 397 (1954).

Arbitration.

The legislature has no power to substitute boards of arbitration for the courts without the consent of the parties, nor to tax an attorney's fee as a penalty for refusal to abide by the assessments or awards of such boards. *Saint Louis, I.M. & S. Ry. v. Williams*, 49 Ark. 492, 5 S.W. 883 (1887).

Claims Against Public Officers and Employees.

This section prevents the General Assembly from giving the claims commission exclusive jurisdiction of tort claims against state employees or officers for their unlawful acts. *Grimmett v. Digby*, 267 Ark. 192, 589 S.W.2d 579 (1979).

Common Law Rights.

A person has no vested property right, no vested interest in any rule of the common law, which the legislature may not increase or diminish and even abolish. *Harlow v. Ryland*, 78 F. Supp. 488 (E.D. Ark. 1948), *aff'd*, 172 F.2d 784 (8th Cir. 1949).

Court Costs.

The statutes authorizing the assessment of special court costs for payment of rent for space occupied in the justice building by the Supreme Court, clerk of the Supreme Court, the Supreme Court library, and the Attorney General in the event that the legislature does not make the necessary appropriations did not violate this section. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Filing fees are universally required in courts throughout the nation on the premise that it is proper to require litigants to pay a small part of the expense necessary for the maintenance of the courts, and such a requirement is constitutional. *Cook v. Municipal Court*, 287 Ark. 382, 699 S.W.2d 741 (1985).

Damages.

The State Highway Commission cannot

be compelled by mandamus to institute an eminent domain proceeding against the landowners to the end that a forum may be provided for the recovery of damages. *Bryant v. Arkansas State Hwy. Comm'n*, 233 Ark. 41, 342 S.W.2d 415 (1961).

Loss of use of a truck during the time it was being repaired was a compensable element of damages. *Sharp v. Great S. Coaches, Inc.*, 256 Ark. 773, 510 S.W.2d 266 (1974).

Although a municipality's violation of a competitive bidding statute may create a right to an equitable remedy or mandamus, it does not give rise to a claim for damages. *Klinger v. City of Fayetteville*, 297 Ark. 385, 762 S.W.2d 388 (1988).

Elections.

Where candidate had pre-election remedy to correct errors on ballot and post-election remedy of contest, he is not denied remedies in violation of the constitution. *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969).

Guest Statutes.

A person is not denied a legal remedy for all injuries to his person, property, or character by a statute which denies a gratuitous guest a cause of action for injuries received in an automobile not operated willfully and wantonly in disregard of the rights of others. *Roberson v. Roberson*, 193 Ark. 669, 101 S.W.2d 961 (1937).

Statute prohibiting suits by guests against owner or operator of car, regardless of degree of negligence, is not unconstitutional on the ground that statute violated this section. *Harlow v. Ryland*, 172 F.2d 784 (8th Cir. 1949).

Limitation on Right.

The county court may not refuse to hear and determine a claim against the county in favor of any individual until he will release all errors in a case wherein the county has obtained judgment against him. *Ex parte Taylor*, 5 Ark. 49 (1843) (decision under prior Constitution).

The legislature possesses no power to cut off all remedy on demands against the estate of a deceased person, or to clog the assertion of a right as to render it inoperative or valueless. *Riggs, Peabody & Co. v. Martin*, 5 Ark. 506 (1844) (decision under prior Constitution).

In a contest of the probate of a will

begun 11½ years after the will was probated, the probate court does not have jurisdiction to set aside its former judgment, and this is no denial of the right to a remedy for all injuries which may be received. *Dunn v. Bradley*, 175 Ark. 182, 299 S.W. 370 (1927).

Statute making it a crime for one person to propose to another that he litigate, regardless of the intention or merits of the proposed litigation, bars any group from access to the judiciary and is unconstitutional. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

Statute which limited recovery in personal injury actions arising from motor vehicle accidents to persons not related within the third degree by blood or marriage to the owner or operator of the vehicle was unconstitutional. *Emberson v. Buffington*, 228 Ark. 120, 306 S.W.2d 326 (1957).

Medical Injuries.

A legitimate state purpose is served by the notice requirement of statute governing actions for medical injuries and it is not unconstitutional. *Simpson v. Fuller*, 281 Ark. 471, 665 S.W.2d 269 (1984).

Mental Anguish.

Statute permitting recovery of damages for mental anguish in wrongful death actions does not violate this section of the Constitution. *Peugh v. Oliger*, 233 Ark. 281, 345 S.W.2d 610 (1961), overruled on other grounds, *Fountain v. Chicago, R.I. & P. Ry.*, 243 Ark. 947, 422 S.W.2d 870 (1968).

Political Rights.

Where political rights are asserted in the action, there is no remedy under this section of the Constitution, which protects personal and property rights. *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969).

Prompt Redress.

A statute requiring the party appealing the decision of an appraisal board to pay attorney's fees in court in the event of unfavorable judgment is unconstitutional for violation of the right to a remedy for all injuries or wrongs. *Saint Louis, I.M. & S. Ry. v. Williams*, 49 Ark. 492, 5 S.W. 883 (1887).

An act which provides for a second judicial district to be held on the same days as

those fixed for the prior district is unconstitutional since the act deprives the suitors of the prior district of their right to prompt redress for injuries. *Ex parte Williams*, 69 Ark. 457, 65 S.W. 711 (1901).

Judgment refusing to discharge the accused on motion to dismiss on the ground of former jeopardy was held error on appeal from such motion; the party was entitled to have his rights tested and determined speedily and it was not necessary that he first be tried and then appeal. *Jones v. State*, 230 Ark. 18, 320 S.W.2d 645 (1959).

Right to Trial.

Under statute giving court authority to set time for new trial after discharge of jury without verdict, the court could direct when the cause would be tried but not whether it could be tried. *Gregory v. Colvin*, 235 Ark. 1007, 363 S.W.2d 539 (1963).

Sovereign Immunity.

This section was never intended to prevent governmental immunity and such immunity to tort actions is still the law. *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974).

Statutes which grant immunity from tort liability to subdivisions of the State are not unconstitutional as a violation of this section, which guarantees all citizens a means of redress from wrongs. *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

Standing.

Plaintiff challenging § 16-114-203 on grounds that it violates the "open door" provision of this section was found to lack standing. *Morrison v. Jennings*, 328 Ark. 278, 943 S.W.2d 559 (1997).

Urban Renewal Plan.

An urban renewal plan cannot be in violation of this section as it would be the actual taking or damaging of lands for public use, rather than any plan or purpose to take or damage same, that must be compensated. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

Cited: *Harlow v. Ryland*, 218 Ark. 659, 238 S.W.2d 502 (1951); *Carter v. Hartenstein*, 248 Ark. 1172, 455 S.W.2d 918 (1970); *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974); *Stevens v. Mid-Continent Invs.*,

Inc., 257 Ark. 439, 517 S.W.2d 208 (1974); Gay v. Rabon, 280 Ark. 5, 652 S.W.2d 836 (1983); Smith v. Stewart, 10 Ark. App. 201, 662 S.W.2d 202 (1983); Jackson v. Ozment, 283 Ark. 100, 671 S.W.2d 736 (1984); Lacey v. Bekaert Steel Wire Corp., 619 F. Supp. 1234 (W.D. Ark. 1985); McCammon v. Boyer, 285 Ark. 288, 686

S.W.2d 421 (1985); National Bank of Commerce v. HCA Health Servs. of Midwest, Inc., 304 Ark. 55, 800 S.W.2d 694 (1990); United States Fid. & Guar. Co. v. Brewer, 52 Ark. App. 214, 916 S.W.2d 773 (1996); Garrison v. City of N. Little Rock, 332 Ark. 103, 964 S.W.2d 185 (1998).

§ 14. Treason.

Treason against the State shall only consist in levying and making war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

§ 15. Unreasonable searches and seizures.

The right of the people of this State to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

RESEARCH REFERENCES

ALR. Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's spouse (residence or nonresidence) — state cases. 1 ALR 4th 673.

Admissibility of evidence discovered in warrantless search of rental property authorized by lessor of such property — state cases. 2 ALR 4th 1173.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse. 4 ALR 4th 196.

Odor of narcotics as providing probable cause for warrantless search. 5 ALR 4th 681.

Sufficiency of showing of reasonable belief of danger to officers or others excusing compliance with "knock and announce" requirement — state criminal cases. 17 ALR 4th 301.

Disputation of truth of matter stated in affidavit in support of search. 24 ALR 4th 1266.

Employment of photographic equipment to record presence and nature of items as constituting unreasonable search. 27 ALR 4th 532.

Validity of searches conducted as condi-

tion of entering public premises. 28 ALR 4th 1250.

Lawfulness of warrantless search of purse or wallet of person arrested or suspected of crime. 29 ALR 4th 771.

Admissibility, in criminal case, of evidence discovered by warrantless search in connection with fire investigation — post-Tyler cases. 31 ALR 4th 194.

Propriety in state prosecution of severance of partially valid search warrant and limitation of suppression to items seized under invalid portions of warrant. 32 ALR 4th 378.

Validity of routine roadblocks by state or local police for purpose of discovery of vehicular or driving violations. 37 ALR 4th 10.

Validity of, and admissibility of evidence discovered in, search authorized by judge over telephone. 38 ALR 4th 1145.

Admissibility, in criminal case, of physical evidence obtained without consent by surgical removal from persons' body. 41 ALR 4th 60.

Seizure pursuant to, and validity of arrest made in reliance upon, uncorrected or outdated warrant list or similar police records. 45 ALR 4th 550.

Officer's ruse to gain entry as affecting admissibility of plain view evidence. 47 ALR 4th 425.

Necessity that police obtain warrant before taking possession of, examining or testing evidence discovered in search by private person. 47 ALR 4th 501.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches. 99 ALR 5th 557.

Error, in either search warrant or application for warrant, as to address of place to be searched as rendering warrant invalid. 103 ALR 5th 463.

Search warrant as authorizing search of structures on property other than main house or other building, or location other than designated portion of building. 104 ALR 5th 165.

Admissibility, in civil proceeding, of evidence obtained through unlawful search and seizure. 105 ALR 5th 1.

Odor detectable by unaided person as furnishing probable cause for search warrant. 106 ALR 5th 397.

When are facts offered in support of search warrant for evidence of sale or possession of cocaine so untimely as to be stale — State cases. 109 ALR 5th 99.

When are facts offered in support of search warrant for evidence of sexual offense so untimely as to be stale — State cases. 111 ALR 5th 239.

When are facts relating to marijuana, provided by one other than police or other law enforcement officer, so untimely as to be stale when offered in support of search warrant for evidence of sale or possession

of a controlled substance — State cases. 112 ALR 5th 429.

When are facts relating to drug other than cocaine or marijuana so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of controlled substance — State cases. 113 ALR 5th 517.

Ark. L. Notes. Kirkpatrick, "Jar Wars": An Examination of the Legality of Drug Testing in the Employment Decision, etc., 1987 Ark. L. Notes 25.

Ark. L. Rev. Constitutional Law — Admissibility of Illegally Obtained Evidence in a Civil Trial, 17 Ark. L. Rev. 207.

Note, Criminal Procedure — Good Faith, Big Brother, and You: The United States Supreme Court's Latest Good Faith Exception to the Fourth Amendment Exclusionary Rule. *Arizona v. Evans*, 115 S. Ct. 1185 (1995), 18 UALR L.J. 533.

C.J.S. 16C C.J.S., Constitutional Law, § 1003 et seq.

UALR L.J. Notes, Criminal Procedure — Exclusionary Rule — No Good Faith Exception to the Arkansas Rules of Criminal Procedure — Yet, 8 UALR L.J. 513.

Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

Comment, Arkansas's Entry into the Not-So-New Judicial Federalism, 25 UALR L.J. 835.

CASE NOTES

ANALYSIS

In general.

Construction.

Private citizens.

Public places.

Reasonableness.

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Roadblocks.

Warrantless arrest.

—Pretextual.

Warrantless search.

—Expectation of privacy.

—Grounds.

—Incident to arrest.

—Unreasonable.

—Personal effects.

—Plain view.

—Unreasonable.

—Waiver.

Warrants.

—Action for damages.

—Issuance.

—Affidavit.

—Grounds.

—Oath or affirmation.

—Unreasonable.

—Production at trial.

—Sufficiency.

In General.

This section is a limitation upon the power of government and not an authorization for the issuance of search warrants.

Grimmett v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

The term "unreasonable search" in this section is interpreted by Arkansas courts in the same manner that the Supreme Court interprets that term in U.S. Const. Amend. 4. Stout v. State, 320 Ark. 552, 898 S.W.2d 457 (1995).

Where the item to be sniffed is properly detained or is properly in an area free for use of the dog, the "canine sniff" simply is not a search within the meaning of the Fourth Amendment or the Arkansas Constitution. Duck v. State, 346 Ark. 148, 55 S.W.3d 263 (2001).

Construction.

This section provides no greater protection against unreasonable searches and seizures than does the Fourth Amendment to the United States Constitution. Mullinax v. State, 53 Ark. App. 176, 920 S.W.2d 503 (1996).

Under search and seizure cases, the Arkansas Supreme Court typically interprets this section in the same manner that the United States Supreme Court interprets the Fourth Amendment. Duck v. State, 346 Ark. 148, 55 S.W.3d 263 (2001).

Private Citizens.

The restraints of this section are upon the state and its agents and not upon private individuals and had no application to the act of a hospital laboratory technician in taking a sample of blood from a motor vehicle operator charged with involuntary manslaughter to test its alcoholic content. Walker v. State, 244 Ark. 1150, 429 S.W.2d 121 (1968).

Where a deputy sheriff gave the names of several suspects to the owner of a burglarized store, a subsequent search and seizure by the store owner of the defendant's automobile, which contained many of the stolen items, was not unconstitutional under this section since the store owner was neither an agent of the government nor was his independent search and seizure instigated, encouraged, or participated in by the police. Smith v. State, 267 Ark. 1138, 594 S.W.2d 255 (1980).

Public Places.

The constitutional guarantee against search and seizure does not apply to entry into a public place. Gerald v. State, 237 Ark. 287, 372 S.W.2d 635 (1963).

Constitutional provisions against un-

reasonable search and seizure afford no shield to defendant as to articles removed from truck parked in the open, the objects in the truck being visible without committing trespass. Williams v. State, 237 Ark. 569, 375 S.W.2d 375 (1964), appeal dismissed and cert. denied, 381 U.S. 276, 85 S. Ct. 1457, 14 L. Ed. 2d 431 (1965).

Trial court properly denied defendants' motion to suppress evidence seized from their garbage container outside the curtilage of their home; defendants exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment and State constitution protection. Rikard v. State, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 507 (Oct. 9, 2003).

Reasonableness.

The common-law "knock and announce" principle forms a part of the reasonableness inquiry under the Fourth Amendment. Wilson v. Arkansas, 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976 (1995).

There was no violation of defendants' Fourth Amendment rights when officers drove up the driveway to their house looking for a probationer in the area, discovered marijuana growing in plain view, and obtained a search warrant as a result; further, under Ark. Code Ann. § 16-82-201(a), the argument that the warrant was issued by a magistrate in a separate county was of no merit. Lancaster v. State, 81 Ark. App. 427, 105 S.W.3d 365 (2003).

Records.

The state may compel corporations doing business with the state to produce books for investigation in determining that the state laws have been complied with, and the power extends to the production of books and papers kept outside the state. Hammond Packing Co. v. Arkansas, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).

Statute giving commission power to conduct an examination of the books, records, documents, and other papers as it desires without search warrants is unconstitutional. Smith v. Faubus, 230 Ark. 831, 327 S.W.2d 562 (1959).

In a business where there is a legitimate public interest and close regulation, such as the distribution of drugs, a procedure for the issuance of a warrant prior to an administrative inspection is not constitutionally required. Hosto v. Brickell, 265 Ark. 147, 577 S.W.2d 401 (1979).

Roadblocks.

A warrant need not be issued prior to conducting a fixed roadblock. *Mullinax v. State*, 327 Ark. 41, 938 S.W.2d 801, cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997).

Roadblock was a reasonable seizure under this section, and the trial court did not err in refusing to suppress the evidence obtained against defendant at the roadblock where there was no profiling of vehicles, every vehicle was stopped, and every fifth vehicle was detained for a more detailed check not lasting more than two minutes. *Mullinax v. State*, 327 Ark. 41, 938 S.W.2d 801, cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997).

Warrantless Arrest.

Since the possession of an unregistered still is a felony, an officer may arrest without a warrant where there are reasonable grounds to believe that person arrested possesses such still. *Knight v. State*, 171 Ark. 882, 286 S.W. 1013 (1926).

A public officer may enter a public place to make an arrest upon probable cause that an unlawful act is being committed there as the protection of the searches and seizures clause extends only to dwellings and other such private places. *Albright v. Muncrief*, 206 Ark. 319, 176 S.W.2d 426 (1943).

While police officers in one locality are justified in acting upon messages received from officers in another locality, police officers could not rely solely upon hearsay contained in messages from the border control as probable cause for arresting defendant and searching his automobile. *Rodriguez v. State*, 262 Ark. 659, 559 S.W.2d 925 (1978).

It is doubtful that defendant would have been arrested simply for traveling 40 miles per hour in a 35-mile zone and possessing a corroding roofing hatchet that had clearly been in his vehicle for quite some time, therefore, the search and seizure was pretextual and was properly suppressed. *State v. Sullivan*, 340 Ark. 315, 11 S.W.3d 526 (2000).

Police officer had authority to arrest defendant because defendant was seen speeding away from the scene of an attempted robbery and his description matched that given by an eyewitness to the crime; hence, there was probable

cause to arrest defendant and to search his car, where the wallet of the other robbery perpetrator was found, and defendant's pretrial motion to suppress all evidence obtained after his arrest was properly denied. *Martinez v. State*, 352 Ark. 135, 98 S.W.3d 827 (2003).

Trial court did not err in finding that defendant's arrest was valid; given that defendant was the last person seen at the crime scene, defendant's girlfriend gave police the murder weapon, and defendant had access to a gun, the police had probable cause to arrest defendant without a warrant pursuant to Ark. R. Crim. P. 4.1. *Winston v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 623 (Nov. 20, 2003).

—Pretextual.

The U.S. Supreme Court has held that an arrest may not be used as a pretext to search for evidence. Pretext is a matter of the arresting officer's intent, and the whole issue of pretext turns on the totality of the facts and circumstances surrounding the arrest. *State v. Sullivan*, 340 Ark. 315, 11 S.W.3d 526 (2000).

Warrantless Search.

A search without a warrant is not indictable since not expressly prohibited; however entry of a dwelling house is indictable at common law, but such indictment must show forcible entry. *State v. Leathers*, 31 Ark. 44 (1876).

Not all searches and seizures without a warrant, but only which are unreasonable, are prohibited. *Mann v. City of Heber Springs*, 239 Ark. 969, 395 S.W.2d 557 (1965); *Wickliffe v. State*, 258 Ark. 544, 527 S.W.2d 640 (1975).

A wooded area a mile away from defendant's father's house, even though it belonged to the father, cannot be regarded as appurtenant to his house or curtilage and may be searched without a warrant. *Wyss v. State*, 262 Ark. 502, 558 S.W.2d 141 (1977).

Trooper made a traffic stop because he had probable cause to believe that defendant's vehicle had violated a traffic law, namely following too closely; thus, even in the absence of reasonable suspicion and without violating the Fourth Amendment, the trooper, with his police dog at the trooper's immediate disposal, could perform a permissible canine sniff, and once the dog alerted, that constituted probable

cause for the trooper to search defendants' vehicle. *Miller v. State*, 81 Ark. App. 401, 102 S.W.3d 896 (2003).

—Expectation of Privacy.

The defendant did not have a legitimate expectation of privacy in a deer stand and, therefore, a search of the deer stand by a wildlife officer was proper where a person standing inside the box was exposed to the public's view, there was no evidence that the defendant used the stand to engage in private activity other than eating meals or that he attempted to shield his activities from the public, and the defendant employed no apparent means of restricting access to the deer stand. *Rainey v. Hartness*, 339 Ark. 293, 5 S.W.3d 410 (1999).

Defendant did not have standing to challenge the search and seizure or knock-and-talk procedures orchestrated by police officers; defendant stated several times on the stand that the trailer being searched was not his home, and he offered no proof that he owned, leased, or maintained any control over the trailer. *Gaylord v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 569 (Oct. 30, 2003).

—Grounds.

Automobile may be searched without a warrant where there is reasonable or probable cause for the belief of the officers that contents of automobile offend against the law. *Mann v. City of Heber Springs*, 239 Ark. 969, 395 S.W.2d 557 (1965).

Where an officer had reasonable grounds to believe from a confidential source of information that the defendant was returning from Mexico in a red and white Rambler station wagon with a large quantity of illegal drugs and the officer stopped defendant, searched the automobile, and found the drugs, such search was reasonable. *Tygart v. State*, 248 Ark. 125, 451 S.W.2d 225, cert. denied, 400 U.S. 807, 91 S. Ct. 50, 27 L. Ed. 2d 36 (1970).

Where a police officer had been given a description of a car and occupants suspected of shoplifting and stopped defendant's car on the basis thereof, observing bags of merchandise fitting the description of the stolen articles in plain view on the floor of the car, and forthwith seized the car and the stolen articles, the warrantless search and seizure were reasonable and did not violate defendant's con-

stitutional rights, although the defendant was not arrested until sometime after the seizure. *Cox v. State*, 254 Ark. 1, 491 S.W.2d 802, cert. denied, 414 U.S. 923, 94 S. Ct. 230, 38 L. Ed. 2d 157 (1973).

Probable cause is not sufficient to justify a warrantless seizure of an automobile when not incident to arrest; there must also be the existence of exigent circumstances. *Freeman v. State*, 258 Ark. 617, 527 S.W.2d 909 (1975).

Police officers, having recognized an axe in the bed of defendant's truck as stolen property, were justified in also taking a crowbar and toolbox in view of the report that tools in addition to the axe had been stolen. *Wyss v. State*, 262 Ark. 502, 558 S.W.2d 141 (1977).

The circumstances excusing a search without a warrant must be exigent; these circumstances must be jealously and carefully drawn and must involve danger to the officers or risk of loss or destruction of evidence. *Moore v. State*, 268 Ark. 171, 594 S.W.2d 245 (1980).

If police officers have not developed a reasonable suspicion of defendant based on the reliability of an informant, seizures resulting from the stop of a car cannot stand and neither can the forfeitures. *Kaiser v. State*, 296 Ark. 125, 752 S.W.2d 271 (1988).

Although the searching officer testified that defendant did not present a danger to that officer, because defendant was in the custody of a fellow officer, it was still possible that defendant could have broken away from police and had access to any weapons in the truck, moreover, defendant was stopped because his vehicle met the description of the police broadcast regarding shots being fired from the described vehicle; thus, the trial court's decision denying defendant's motion to suppress was not clearly erroneous. *Saulsberry v. State*, 81 Ark. App. 419, 102 S.W.3d 907 (2003).

—Incident to Arrest.

Where a substantially contemporaneous lawful arrest and a search without warrant are made, a still obtained in the search was not taken in violation of the guaranty against lawful search. *Knight v. State*, 171 Ark. 882, 286 S.W. 1013 (1926).

The search and seizure in question cannot be said to be unreasonable under the constitutional prohibition where the ar-

rest, being made for offenses committed in the presence of the arresting officers, was lawful and the search was merely incidental to it. *Williams v. State*, 230 Ark. 574, 323 S.W.2d 922 (1959).

Where the defendant was arrested while in an automobile for which police were searching because of fraudulent checks given in its purchase and a search of the automobile revealed a number of articles of property stolen in a recent burglary, police search of defendant after arresting him was reasonable. *Ward v. State*, 243 Ark. 472, 420 S.W.2d 540 (1967).

The search, by officers seeking four participants in an alleged rape, of a car answering the description of the car alleged to have been involved in the crime and containing three of the alleged participants without a warrant within a few hours following the alleged crime was not unreasonable and evidence obtained thereby was admissible even against the fourth defendant who was not in the car. *Scott v. State*, 249 Ark. 967, 463 S.W.2d 404 (1971).

A warrantless search and seizure was not unreasonable where police apprehended appellants in truck matching description of vehicle used in escape from scene of robbery, and robbery victim, who was being held hostage in the truck, informed police that one of the appellants had a weapon hidden under the front seat, whereupon the police searched for and seized a pistol. *Guffey v. State*, 253 Ark. 720, 488 S.W.2d 28 (1972).

Where officer had been notified of suspicious actions of truck near high line poles adjacent to highway and that some of the wires were missing, and when officer arrived at scene defendants drove away in truck and officer saw tree trimmers in the back of truck and took such defendants into custody and had truck towed to a fenced salvage yard and the next day after the arrest the officer removed the tree trimmers, such tree trimming shears were not obtained by illegal search and seizure. *Wickliffe v. State*, 258 Ark. 544, 527 S.W.2d 640 (1975).

Warrantless search held improper as not incident to arrest. *Freeman v. State*, 258 Ark. 617, 527 S.W.2d 909 (1975); *State v. Osborn*, 263 Ark. 554, 566 S.W.2d 139 (1978).

The defendant's rights under this sec-

tion were not abridged where the defendant was interrogated by police after he had been stopped near the scene of a rape and burglary, which was one of a series of such crimes committed by a man matching the defendant's description, and where his fingerprints were taken, during the course of the interrogation, with the defendant's consent. *Loomis v. State*, 261 Ark. 803, 551 S.W.2d 546 (1977).

The hatchback area of a station wagon as part of the "passenger compartment" of an automobile was properly part of a search incident to a lawful arrest. *Stout v. State*, 320 Ark. 552, 898 S.W.2d 457 (1995).

—Unreasonable.

The search of an entire house without a warrant over the objection of the person arrested on a marijuana charge was unreasonable and was not cured by the absence from the city of a judge who could issue the warrant. *Long v. State*, 256 Ark. 417, 508 S.W.2d 47 (1974).

Where police officers knew at least 24 hours in advance which vehicle the defendant would be driving and several teams of officers had been able to drive around the slick city streets for two hours prior to apprehending the defendant, the icy streets and below-freezing temperatures did not create exigent circumstances justifying a warrantless search of defendant's car after the car had been secured and the defendant arrested; therefore, the defendant's motion to suppress the contraband found during the search should have been granted. *Moore v. State*, 268 Ark. 171, 594 S.W.2d 245 (1980).

The very facts and circumstances surrounding the arrest proved that it was pretextual in nature, made solely for the purpose of searching the defendant's vehicle for controlled substances, and defendant was entitled to an order suppressing any and all evidence seized from his vehicle. *State v. Sullivan*, 340 Ark. 315, 11 S.W.3d 526 (2000).

—Personal Effects.

A toolbox is not a repository of personal effects which may not be searched without a warrant. *Wyss v. State*, 262 Ark. 502, 558 S.W.2d 141 (1977).

Where police officers conducted a warrantless search of the defendant's car and found contraband in his shaving kit, the

defendant's motion to suppress such contraband should have been granted since the automobile had already been secured by the police, the shaving kit was in the exclusive control of the police, and the defendant had a reasonable expectation of privacy in the matter of his personal luggage, including his shaving kit. *Moore v. State*, 268 Ark. 171, 594 S.W.2d 245 (1980).

—Plain View.

Where police officers obtained evidence by observing men playing cards with money and chips being used in the game and made arrests based on their observations, it was not necessary to conduct a search to uncover evidence and, thus, this provision of the constitution is not applicable. *Gerard v. State*, 237 Ark. 287, 372 S.W.2d 635 (1963).

Where a screwdriver was removed by an officer from the automobile of a burglary suspect before his arrest and without his consent and the screwdriver was not in plain view of the officer, such seizure was constitutionally unreasonable. *Jelinek v. State*, 262 Ark. 276, 556 S.W.2d 426 (1977).

Arkansas courts have treated "plain view" as an exception to the warrant requirement. *Washington v. State*, 42 Ark. App. 188, 856 S.W.2d 631 (1993).

The observation of evidence in plain view is not a search and, therefore, the resulting seizure is not the result of an unreasonable search. *Washington v. State*, 42 Ark. App. 188, 856 S.W.2d 631 (1993).

The basic test in determining the reasonableness of a seizure under the plain view doctrine is whether the officer had a right to be in the position he was when the objects fell into his plain view. *Washington v. State*, 42 Ark. App. 188, 856 S.W.2d 631 (1993).

In order for the plain view doctrine to apply three criteria must be met: (1) the initial intrusion was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating nature of the evidence was immediately apparent. *Washington v. State*, 42 Ark. App. 188, 856 S.W.2d 631 (1993).

Inadvertent discovery is not a requirement of a warrantless seizure of evidence in plain view. *Fultz v. State*, 333 Ark. 586, 972 S.W.2d 222 (1998).

Police did not violate this section by recording VIN numbers of stolen vehicles located in defendant's driveway; police did not need a warrant because defendant did not have a reasonable expectation of privacy in his driveway and the VIN numbers were in plain view. *McDonald v. State*, — Ark. —, 119 S.W.3d 41, 2003 Ark. LEXIS 485 (2003).

—Unreasonable.

No authority existed for a "knock and search" doctrine holding that, after knocking, it was permissible to begin a warrantless search before anyone came to the door; thus, where police officers began searching residence before defendant was summoned, an illegal search was performed that was prohibited by the state constitution. *Griffin v. State*, 347 Ark. 788, 67 S.W.3d 582 (2002).

Based on a search pursuant to a federal warrant, the officers knew the mailed package contained drugs, but when the officers delivered the package to defendant, entered defendant's residence through a closed screen door without a warrant, then pursued defendant, who fled to the bathroom with the package, the purported exigent circumstances were manufactured by the officers and the trial court erred in denying defendant's motion to suppress. *Mann v. State*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 878 (Dec. 10, 2003).

—Waiver.

The constitutional guaranty against search and seizure without warrant may be waived. *Williams v. State*, 237 Ark. 569, 375 S.W.2d 375 (1964), appeal dismissed, 381 U.S. 276, 85 S. Ct. 1457, 14 L. Ed. 2d 431 (1965).

Where officers, after identifying themselves as officers, were invited into the apartment by one of the appellants and no demand was ever made by her on the officers for a search warrant, the evidence clearly disclosed she waived the right to a search warrant. *Dokes v. State*, 241 Ark. 720, 409 S.W.2d 827 (1966), cert. denied, 389 U.S. 901, 88 S. Ct. 212, 19 L. Ed. 2d 218 (1967).

This section was not violated by an order of the prosecuting attorney to a bank to appear before him and produce copies of records of a depositor's account where the depositor consented. *First Nat'l*

Bank v. Roberts, 242 Ark. 912, 416 S.W.2d 316 (1967).

If a suspect spontaneously advises investigating officers that evidentiary material is to be found in a given place in his house, the volunteering of such information is tantamount not only to a consent to a search of the house but also to an invitation to the officers to make the search and they are free to act upon it without a search warrant. *Haire v. Sarver*, 306 F. Supp. 1195 (E.D. Ark. 1969), *aff'd*, 437 F.2d 1262 (8th Cir.), *cert. denied*, 404 U.S. 910, 92 S. Ct. 235, 30 L. Ed. 2d 182 (1971).

A warrantless search of a car had no constitutional defects when preceded by voluntary consent. *Alexander v. State*, 255 Ark. 135, 499 S.W.2d 849 (1973).

The consent of a premises owner to the warrantless search of her home for stolen property was voluntary where the owner signed a consent to search the premises and a waiver of her right to be free from unreasonable searches and seizures, even though the owner was not verbally informed of her right to refuse consent. *King v. State*, 262 Ark. 342, 557 S.W.2d 386 (1977).

When one consents to the search of a vehicle, there is not, in any sense, an implied exception of the trunk. *Miller v. State*, 69 Ark. App. 264, 13 S.W.3d 588 (2000).

There was a lack of apparent authority to justify the government's warrantless search of the defendant's home where the only matters the police officer who received the consent observed were a woman standing in the front yard of the defendant's house, who he may have reasonably believed made a terminated 911 telephone call, and who stated that the defendant was manufacturing a controlled substance in a certain room in the house; however, the search was proper because the woman had actual authority to give consent to a search because she had lived in the defendant's house for an extended period of time and had mutual use of the property. *Goodman v. State*, 74 Ark. App. 1, 45 S.W.3d 399 (2001).

Warrants.

—Action for Damages.

The procurement of a search warrant against a person, maliciously and without

probable cause, will support an action for damages for malicious prosecution. *Hardin v. Hight*, 106 Ark. 190, 153 S.W. 99 (1913).

—Issuance.

A statute authorizing the issuance of a warrant for seizure and destruction of illegally kept liquors, when it is established after notice to and hearing of the claimants that the liquor is illegally kept, is constitutional. *Ferguson v. Josey*, 70 Ark. 94, 66 S.W. 345 (1902).

A peace officer may not issue search and seizure warrants since only judicial officers may issue such warrants. *Ex parte Levy*, 204 Ark. 657, 163 S.W.2d 529 (1942).

Where statutes authorizing search warrants did not authorize the issuance of a search warrant for drugs; nor did the common law, drugs seized pursuant to such a warrant were inadmissible. *Grimmett v. State*, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

—Affidavit.

The failure to raise a constitutional claim concerning the introduction of evidence obtained in a search pursuant to search warrants issued on defective affidavits, regardless of its effect as a waiver of later litigation or review in the state system, would not preclude an inquiry into that claim in a federal habeas corpus proceeding. *Frazier v. Roberts*, 441 F.2d 1224 (8th Cir. 1971).

An affidavit should speak in factual and not mere conclusory language, for it is the function of the judicial officer, before whom the proceedings are held, to make an independent and neutral determination based upon facts, not conclusions, justifying an intrusion into one's home. *State v. Broadway*, 269 Ark. 215, 599 S.W.2d 721 (1980).

Where affidavit for search warrant named the police informant but did not state how the informant was acquainted with the affiant so that there were no particular facts presented as to the informant's reliability, the search warrant violated this section. *State v. Prue*, 272 Ark. 221, 614 S.W.2d 221, *cert. denied*, 454 U.S. 863, 102 S. Ct. 322, 70 L. Ed. 2d 163 (1981). But see *Thompson v. State*, 280 Ark. 265, 658 S.W.2d 350 (1983).

Affidavit for the search warrant in which the affiant stated that a confiden-

tial informant had revealed that defendant was selling marijuana at his residence, the informant had proven reliable in the past, the informant on two occasions had purchased marijuana from the defendant, the informant had seen marijuana in defendant's bedroom and in defendant's vehicle, and surveillance of defendant's home had disclosed excessive traffic going in and out, including a known dealer in drugs, was sufficient. *Jackson v. State*, 283 Ark. 301, 675 S.W.2d 820 (1984).

An affidavit with absolutely no reference to a time frame does not provide sufficient information upon which a probable cause determination can be made; accordingly, the issuance of a warrant on such an affidavit violates this section and results in an unreasonable search and seizure. *Ulrich v. State*, 19 Ark. App. 62, 716 S.W.2d 777 (1986).

—Grounds.

In an affidavit for a search warrant, if an officer swears that there is contraband at a particular address, there are three possibilities for the basis of his conclusion: (1) the officer has seen the illegal object or objects in which event his affidavit should assert his personal observation; (2) the officer observed or perceived facts from which the presence of the contraband may reasonably be inferred, in which event the affidavit must recite the perceived facts so that the magistrate may judge the existence of probable cause; (3) the officer obtained the information from someone else, as for example an informer, in which event the warrant should not issue unless good cause is shown in the affidavit or supporting testimony for crediting the hearsay. *Bailey v. State*, 246 Ark. 362, 438 S.W.2d 321 (1969).

The search of appellant's house and seizure of stolen articles therein was not unreasonable where police officers had seen some green stamps which had been stolen in plain view inside the house before getting the search warrant. *Young v. State*, 254 Ark. 72, 491 S.W.2d 789 (1973).

Where affidavit of one officer stated information received from an informer and stated reasons for giving credence to the statements of the informer, and such affidavit was supported by another affidavit giving recorded telephone conversations, affidavits furnished sufficient probable

cause for the issuance of a warrant to search the apartment. *Blankenship v. State*, 258 Ark. 535, 527 S.W.2d 636 (1975).

A conclusory statement in a search warrant that there were reasonable grounds for issuance of such warrant was not patently unconstitutional where the attached affidavit stated all the information on which the finding was based. *Baxter v. State*, 262 Ark. 303, 556 S.W.2d 428 (1977).

Incriminating admission from defendant's son obtained on lawful entry onto common driveway in front of defendant's house, accusation by housemate, and officers' observation of marijuana plants constituted probable cause to support search warrant. *Williams v. State*, 53 Ark. App. 63, 918 S.W.2d 209 (1996).

—Oath or Affirmation.

A statute authorizing a search for intoxicating liquors without information on oath or affirmation is unconstitutional. *Ferguson v. Josey*, 70 Ark. 94, 66 S.W. 345 (1902).

Sheriffs or peace officers giving notice of the operation of gambling devices to judges, and requiring the accused to be dealt with by appropriate process, is not a violation of the section requiring the information to be given under oath as only officers under official oath give such information. *State v. Williams*, 109 Ark. 465, 161 S.W. 159 (1913).

Affidavit for search warrant was void on its face where it showed that the officers who executed the affidavit did not appear before any officer authorized to take such an acknowledgment and jurat to the affidavit was not executed by any official. *Bailey v. State*, 246 Ark. 362, 438 S.W.2d 321 (1969).

A search warrant issued by a judge on oral testimony of a police officer before him under oath was a sufficient compliance with the requirement of this section that the warrant be issued upon probable cause supported by oath or affirmation, there being no requirement that such oath or affirmation be in the form of a written affidavit. *Tygart v. State*, 248 Ark. 125, 451 S.W.2d 225, cert. denied, 400 U.S. 807, 91 S. Ct. 50, 27 L. Ed. 2d 36 (1970).

—Unreasonable.

Search warrant to obtain bullet lodged in defendant's spinal canal, the use of

which would involve a major operation with pain, trauma, and risk of life, was invalid as unreasonable. *Bowden v. State*, 256 Ark. 820, 510 S.W.2d 879 (1974).

—Production at Trial.

It is error when the state fails to produce the alleged search warrant on which it relies at trial. *Russ v. Camden*, 256 Ark. 214, 506 S.W.2d 529 (1974).

—Sufficiency.

Where search warrant described premises to be searched as farmhouse, barn, and curtilage and appurtenances, the description was sufficient to authorize police officers to search a chicken house and a hay shed on the farm. *State v. Cashion*, 260 Ark. 148, 539 S.W.2d 423 (1976).

The absence of the recitations required by court rules did not substantially prejudice defendant where the search warrant was executed and the return made within a few hours after the warrant was issued, the officer offered a sworn statement that evidence of the crimes might be disposed of by morning, and the magistrate's actual issuance of the search warrant established his finding of probable cause even more positively than the insertion of a conclusory finding to that effect would have. *Harris v. State*, 262 Ark. 506, 558 S.W.2d 143 (1977).

The absence of a reference to time in an affidavit does not make the subsequent

warrant automatically defective, however, where the omission of any reference to time is so complete that none can be inferred, the affidavit is defective and the warrant invalid. *Herrington v. State*, 287 Ark. 228, 697 S.W.2d 899 (1985).

The good faith exception to the exclusionary rule should not be applied when the warrant is so facially deficient that the executing officers cannot reasonably presume it to be valid. An arrest warrant which fails to particularize or enumerate the crime for which the suspect was arrested is facially deficient. *Abbott v. State*, 307 Ark. 278, 819 S.W.2d 694 (1991).

Based on the officers' experience with the drug task force, they could not have reasonably presumed that the arrest warrant was valid on its face as it stated that defendant had committed an offense that did not exist under § 5-64-401. *Abbott v. State*, 307 Ark. 278, 819 S.W.2d 694 (1991).

Cited: *Clubb v. State*, 230 Ark. 688, 326 S.W.2d 816 (1959); *Russ v. Camden*, 256 Ark. 214, 506 S.W.2d 529 (1974); *United States v. Price*, 441 F. Supp. 814 (E.D. Ark. 1977); *Fairchild v. Lockhart*, 675 F. Supp. 469 (E.D. Ark. 1987); *Jackson v. State*, 291 Ark. 98, 722 S.W.2d 831 (1987); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002).

§ 16. Imprisonment for debt.

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

RESEARCH REFERENCES

Am. Jur. 16B *Am. Jur. 2d*, Constitutional Law, § 627 et seq.

C.J.S. 16 *A C.J.S.*, Constitutional Law, § 487 et seq.

UALR L.J. *Survey, Criminal Law*, 12 *UALR L.J.* 617.

CASE NOTES

ANALYSIS

Contempt power.
Detention by sureties.
Disobedience of court order.
Fraud or fraudulent intent.
Practicing without license.

Contempt Power.

A chancellor can enforce an order to compel conduct, even if it is an order to pay money, by the contempt power, but the contempt power is limited to cases where the contemnor has the ability to

pay. *Gould v. Gould*, 308 Ark. 213, 823 S.W.2d 890 (1992).

Detention by Sureties.

Proceedings by sureties to detain the executor indemnified are not proceedings to arrest a debtor for debt, but to obtain indemnity for the surety against the debt, or liability upon which the surety is bound, before it is due. *Ruddell v. Childress*, 31 Ark. 511 (1876).

Disobedience of Court Order.

Imprisonment for disobedience of an order directing payment of specific funds adjudged to be in the hands of the defendant is not imprisonment for debt. *Meeks v. State*, 80 Ark. 579, 98 S.W. 378 (1906); *Harrison v. Harrison*, 239 Ark. 756, 394 S.W.2d 128 (1965); *Cummings v. Fingers*, 296 Ark. 276, 753 S.W.2d 865 (1988).

Judgment of imprisonment for disobedience of order to pay a sum into court without finding that defendant had such sum is an imprisonment for debt. *Leonard v. State*, 170 Ark. 41, 278 S.W. 654 (1926); *Godwin v. Godwin*, 268 Ark. 364, 596 S.W.2d 695 (1980).

While inability to perform is a defense to contempt citations, where the inability to pay on a property settlement agreement incorporated into a divorce decree is due to actions or inactions on the defen-

dant's own part, a finding of contempt is proper. *Brown v. Brown*, 305 Ark. 493, 809 S.W.2d 808 (1991).

Imprisonment for disobedience of an order to pay a sum into the court, without finding the party was able to pay the sum, is imprisonment for debt in violation of this section. *Whitworth v. Whitworth*, 331 Ark. 461, 961 S.W.2d 768 (1998).

Fraud or Fraudulent Intent.

Criminal provision of statute for failure of the contractor to satisfy the lien which does not make fraud or fraudulent intent a part or prerequisite of the criminal offense violates this section. *Peairs v. State*, 227 Ark. 230, 297 S.W.2d 775 (1957).

Supreme Court upheld trial court's ruling that § 5-37-525, which makes it a crime for a contractor or subcontractor to knowingly refuse to pay for materials, is unconstitutional in that it violates this section, which prohibits imprisonment for debt. *State v. Riggs*, 305 Ark. 217, 807 S.W.2d 32 (1991).

Practicing Without License.

The punishing of attorneys practicing without a license as a misdemeanor does not violate provision of Constitution against imprisonment for debt. *Shepherd v. City of Little Rock*, 183 Ark. 244, 35 S.W.2d 361 (1931).

§ 17. Attainder — Ex post facto laws.

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

RESEARCH REFERENCES

ALR. Prejudgment interest in tort actions, validity and construction of statute or rule allowing or changing rate. 40 ALR 4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts. 41 ALR 4th 694.

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 643 et seq.

Ark. L. Rev. Notes, Estate of Sargent v. Benton State Bank: Judicial Limitations on a Slayer's Right to Inherit from the Decedent, 38 Ark. L. Rev. 653.

C.J.S. 16A C.J.S., Constitutional Law, § 409 et seq.

UALR L.J. Oliver, Rejecting the "Whipping-Boy" approach to tort law: Well-made handguns are not defective products, 14 UALR L.J. 1.

CASE NOTES

ANALYSIS

Applicability.**Contract impairment.**

- Assessment for improvements.
- Attorney and client.
- Claims against an estate.
- Donation of certificates.
- Franchise.
- Judgment creditor.
- Materialman's lien.
- Mortgages.
- Police power.
- Private contracts.
- Public contracts.
- Public officers.
- Remedies.
- Repeal of act.
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- In general.
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Jury instructions.

Applicability.

This section applies only to legislation passed subsequent to the contract alleged to have been impaired. *Mahurin v. Oaklawn Jockey Club*, 299 Ark. 13, 771 S.W.2d 19 (1989).

Contract Impairment.

A contract in which payment was to be in Confederate money could not be impaired by the passage of an act which provided that United States currency might be substituted for such Confederate money. *Leach v. Smith*, 25 Ark. 246 (1868) (decision under prior Constitution).

—Assessment for Improvements.

Where an assessment for road improvements has been made and a contract for the construction let on the strength of the assessment, the amount of the benefits assessed cannot be reduced so as to impair the obligation of the contract. *Pool v. Mitchell*, 139 Ark. 319, 213 S.W. 752 (1919).

An act excluding from a road improvement district half the lands originally burdened with the cost after the bond obliga-

tion was incurred, thereby enlarging the burden upon the remaining lands, is unconstitutional as an impairment of contract. *Bacon v. Road Imp. Dist. No. 1*, 157 Ark. 309, 248 S.W. 267 (1923).

—Attorney and Client.

Statute which would destroy and impair the power or right to make contracts between attorney and client was unconstitutional. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

—Claims Against an Estate.

An act may be passed which bars claims against an estate and those arising within two years, after the elapse of a two-year period from death, unless such claims challenge the constitutionality of the non-claim statute as applicable to a particular case. *Bennett v. Dawson*, 18 Ark. 334 (1857) (decision under prior Constitution).

—Donation of Certificates.

A certificate of donation of tax forfeited lands is an obligation of the state and a limited contract which may not be impaired. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

—Franchise.

A franchise granted to erect and maintain light poles in the city streets for 20 years with a subsequent contract to light the streets for ten years is a grant which can not be impaired by the city's charging rent for the use of the ground occupied by the poles. *Hot Springs Elec. Light Co. v. City of Hot Springs*, 70 Ark. 300, 67 S.W. 761 (1902).

—Judgment Creditor.

A judgment creditor has no contract whatever in respect to reduction of interest rates upon judgments previously obtained in state courts, and an act reducing such rates does not impair the prior contracts of such creditor. *Read v. Mississippi County*, 69 Ark. 365, 63 S.W. 807 (1901), *aff'd*, 188 U.S. 739, 23 S. Ct. 849, 47 L. Ed. 677 (1903).

—Materialman's Lien.

Section 18-44-115, which requires notice must be given to a landowner before there is a delivery of materials in order for a materialman's lien to be perfected against the land, is not a law which im-

pairs the obligation of contract in violation of this section of the constitution. *Ellison v. Tubb*, 295 Ark. 312, 749 S.W.2d 650 (1988).

—Mortgages.

An act regulating the sale of property under mortgages and deeds of trust can not affect such instruments executed before the passage of the act. *Robards v. Brown*, 40 Ark. 423 (1883).

An act providing that, in cases of existing mortgages which would bar liability in less than one year from the passage of the statute of limitation, one year is allowed from the date of the passage of the act, is constitutional. *Hill v. Gregory*, 64 Ark. 317, 42 S.W. 408 (1897).

—Police Power.

All contracts are made subject to the police power to change the contracts; therefore, the act conferring the power to change rates does not impair the obligations of a contract. *Camden v. Arkansas Light & Power Co.*, 145 Ark. 205, 224 S.W. 444 (1920).

Statutes governing prepaid funeral expenses are not an unconstitutional impairment of contract between vault company and its salesmen for commissions earned prior to passage as such prohibitions do not prevent a proper exercise by the state of its police power. *Reserve Vault Corp. v. Jones*, 234 Ark. 1011, 356 S.W.2d 225 (1962).

—Private Contracts.

The classes of contracts entered into voluntarily that were based on the assent of the parties or impliedly given, as opposed to those that were compulsory, were protected by the constitutional provisions against impairing the obligations of a contract. *Jones v. Cheney*, 253 Ark. 926, 489 S.W.2d 785 (1973).

—Public Contracts.

Where a board of penitentiary commissioners has made a valid contract the board has no power to rescind the contract, as the power to abrogate is denied the legislature by the constitutional prohibition of impairment of contracts. *McConnell v. Arkansas Brick & Mfg. Co.*, 70 Ark. 568, 69 S.W. 559 (1902).

The legislature can not impair the obligation of the state to pay for work done under a contract for the building of the

state capitol. *Jobe v. Caldwell*, 93 Ark. 503, 125 S.W. 423 (1910).

Contribution of state revenues to road improvement districts is a gratuity which may be withheld or given at will. *Gray v. Jones*, 174 Ark. 650, 296 S.W. 61 (1927).

The contract existing between owners of refunding bonds and the state is not impaired by transferring the balance in the refunding fund to a general refunding bond redemption account. *Scougale v. Page*, 194 Ark. 280, 106 S.W.2d 1023 (1937).

Since holders of outstanding bonds will have at least the substantial equivalent in quality and accessibility of security when receiving refunding bonds, it follows therefore that the refunding does not violate the impairment of contract clause. *Beaumont v. Faubus*, 239 Ark. 801, 394 S.W.2d 478 (1965).

The provision prohibiting the passage of laws impairing obligations of contracts applied to contracts made by the state or by one of its agencies when authorized by law. *Jones v. Cheney*, 253 Ark. 926, 489 S.W.2d 785 (1973).

Acts 1993, No. 294, legislation that resulted in the supplementation of the terms of a consolidation agreement between two school districts as to the election of school board members, and which repealed §§ 6-13-220 and 6-13-301 et seq., did not result in impairment of contract in violation of this section because the contract between the two former districts was public, not private, in nature and was thus subject to legislative action. *East Poinsett County Sch. Dist. No. 14 v. Massey*, 315 Ark. 163, 866 S.W.2d 369 (1993).

—Public Officers.

An act abolishing an office before the end of a fixed term does not impair an obligation of a contract since the officeholder was an officer and not an employee under contract. *Vincenheller v. Reagan*, 69 Ark. 460, 64 S.W. 278 (1901).

Since public officers do not hold office by contract or grant, appropriate duties and penalties may be imposed or removed during an officer's term. *Hunter State Bank v. Mills*, 90 Ark. 10, 117 S.W. 760 (1909).

The sureties on a county treasurer's bond do not become liable for penalties imposed by a statute enacted after the execution of the bond. *Hunter State Bank v. Mills*, 90 Ark. 10, 117 S.W. 760 (1909).

—Remedies.

The legislature has the power to abolish imprisonment for debt. Such laws act merely upon the remedy and may operate upon present as well as future contracts without impairing the obligation thereof. *Newton v. Tibbatts*, 7 Ark. 150 (1846) (decision under prior Constitution).

The right to alter remedies without impairing contracts does not include the right to remove the remedy entirely. *Vernon v. Henson*, 24 Ark. 242 (1866); *Woodruff v. Scruggs*, 27 Ark. 26 (1871) (decisions under prior Constitution).

An act which furnishes a remedy different from those existing when a contract is entered into does not impair the obligation of the contract, or infringe upon the rights of the parties, and is constitutional. *McCreary v. State*, 27 Ark. 425 (1872) (decision under prior Constitution).

Although a legislature may change the remedy in a contract, they may not, in acting on the remedy, interfere with any right accruing under the contract, whether stipulated or the result of law. After a right has been judicially ascertained by judgment, the legislature can not interfere with the process to enforce that right. *Oliver v. McClure*, 28 Ark. 555 (1873) (decision under prior Constitution).

Legislation which deprives a party of a remedy substantially as efficient as that existing at the making of the contract impairs the contract. *Robards v. Brown*, 40 Ark. 423 (1883).

—Repeal of Act.

An act which provides for a lien and the giving of damages in certain employment contracts, and under which a contract is founded, cannot be repealed in relation to those contracts as the repeal would be an impairment. *Chowning v. Barnett*, 30 Ark. 560 (1875).

—Right of Redemption.

Purchaser at an assessment foreclosure sale was not affected by subsequent statute allowing an additional period of redemption to delinquent owner who attempted to redeem after the sale had been made. *Smith v. Spillman*, 135 Ark. 279, 205 S.W. 107 (1918).

The right of redemption of delinquent assessed property is a matter of grace rather than a vested right, and the period of redemption may be reduced from the

period existing at the time of the formation of a drainage district. *State Nat'l Bank v. Morthland*, 196 Ark. 346, 118 S.W.2d 266 (1938).

A statute enacted subsequent to the issue of a donation certificate giving the landowner a further right of redemption regardless of pending donations and remitting the donee to the courts for the enforcement of any rights as to property because of betterments is an impairment of the donee's contractual rights. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

—Taxation.

The imposition of a sales tax on building materials sold under a contract made prior to the date of the tax law does not impair the obligation of the contract. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936).

No one acquires by contract a vested right against the state's power to tax, and the obligation of a contract is not impaired because a subsequently enacted tax affects the subject matter of the contract. *Southern Kraft Corp. v. Hardin*, 205 Ark. 512, 169 S.W.2d 637 (1943).

A proposed amendment which would have abolished state and local sales and use taxes conflicted with the prohibition against the passage of any law impairing the obligation of contracts in the light of existing sales and use tax bonds which were secured by collections of the sales and use tax. *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 669 (2000).

Ex Post Facto.**—In General.**

Statutes can be construed to operate retroactively so long as they do not disturb contractual or vested rights, or create new obligations. *Arkansas Dep't of Human Servs. v. Walters*, 315 Ark. 204, 866 S.W.2d 823 (1993).

If the public policy set out in an act offends the court's sense of justice, the court will not apply it retroactively, but if it does not offend the court's sense of justice, the court can apply it retroactively. *Arkansas Dep't of Human Servs. v. Walters*, 315 Ark. 204, 866 S.W.2d 823 (1993).

—Civil Proceedings.

The imposition of criminal liability ex post facto is prohibited by both the United

States and State Constitutions, as are Bills of Attainder, but the fact that a civil statute might be retroactive is not sufficient, by itself, to invalidate an act. *Arkansas Dep't of Human Servs. v. Walters*, 315 Ark. 204, 866 S.W.2d 823 (1993).

—Criminal Proceedings.

An ex post facto law declares an offense to be punishable in a manner that it was not punishable at the time it was committed and relates exclusively to criminal proceedings. *Taylor v. Governor*, 1 Ark. 21 (1837); *Ex parte Jackson*, 45 Ark. 158 (1885); *Southern Kraft Corp. v. Hardin*, 205 Ark. 512, 169 S.W.2d 637 (1943).

An act dividing a county into judicial districts and providing for the selection of juries only from the appropriate district is not ex post facto relative to offenses committed before passage since the act relates only to procedure and not to punishment. *Potter v. State*, 42 Ark. 29 (1883).

A trial is controlled by the substantive law in effect on the date of the commission of the crime; however, speedy trial rules are not substantive law, they are procedural law, and the rule in effect at the time of trial applies. *Jennings v. State*, 276 Ark. 217, 633 S.W.2d 373, cert. denied, 459 U.S. 862, 103 S. Ct. 137, 74 L. Ed. 2d 117 (1982).

Application of a parole statute less favorable to one who had been sentenced prior to its passage than the parole law existing at the time of his sentencing would be unconstitutional as an ex post facto law in violation of this section. *Bosnick v. Lockhart*, 283 Ark. 206, 672 S.W.2d 52, aff'd, 283 Ark. 206, 677 S.W.2d 292 (1984).

Legislation repealing provisions restricting the admissibility of evidence derived from an intercepted oral communication, which was enacted after the crime but before the defendant's trial, did not violate U.S. Const., Art. I, § 10 and this section prohibiting ex post facto laws. *Smith v. State*, 291 Ark. 163, 722 S.W.2d 853 (1987).

The retroactive application of an act which amended § 12-9-108(a) to provide that action taken by non-qualified law enforcement officers would not be held invalid does not violate the ex post facto clause because: (1) it does not punish as a crime an act previously committed, which was innocent when done; (2) it does not

make more burdensome the punishment for a crime after its commission; (3) it does not alter a legal rule of evidence to receive less or different testimony than was required at the time of the commission of the offense; and (4) it does not deprive a defendant of any defense available at the time when the act was committed. *Ridenhour v. State*, 305 Ark. 90, 805 S.W.2d 639 (1991).

The retroactive application of 1989 Ark. Acts 44, which amended § 12-9-108, was not prohibited by the ex post facto clause where defendant's case was pending when 1989 Ark. Acts 44 was enacted. *Ellis v. State*, 306 Ark. 461, 816 S.W.2d 164 (1991).

When defendant was originally tried and convicted in 1993, Arkansas law then authorized, and he received, a non-bifurcated trial; however, after his original conviction, but before his case was reversed and remanded, Arkansas law was amended to permit bifurcated trials in all felony cases, and trying defendant's second trial on remand pursuant to the newly-enacted bifurcated trial procedure did not violate the Ex Post Facto Clause. *Suggs v. State*, 322 Ark. 40, 907 S.W.2d 124 (1995).

The "cruel or depraved manner" aggravating circumstance, which had not been enacted at the time the crime was committed, is not a merely procedural provision and could not be applied ex post facto. *Bowen v. State*, 322 Ark. 483, 911 S.W.2d 555 (1995), cert. denied, 517 U.S. 1226, 116 S. Ct. 1861, 134 L. Ed. 2d 960 (1996).

The Sex and Child Offender Registration Act of 1997, § 12-12-901 et seq., is essentially regulatory and non-punitive in nature and, therefore, cannot be considered a violation of the ex post facto clauses of the United States or Arkansas Constitutions. *Kellar v. Fayetteville Police Dep't*, 339 Ark. 274, 5 S.W.3d 402 (1999).

Defendant correctly asserted that the application of the 70 percent parole-eligibility rule to defendant's sentence for manufacture of methamphetamine, a 1998 offense, would have been an ex post facto law in violation of the federal and state constitutions; however, defense counsel never raised an objection to the application of the 70 percent parole-eligibility rule at trial, defendant's case did not come within the scope of any of the recognized exceptions to the contemporaneous

objection rule, and Arkansas did not adhere to the “plain error” rule, thus, defendant’s argument was not preserved for review. *McGhee v. State*, 82 Ark. App. 105, 112 S.W.3d 367 (2003).

—Penalties.

Capital felony provisions of an act cannot be applied to offenses committed prior to its enactment because if they were the act would be an ex post facto law. *Upton v. Graves*, 255 Ark. 516, 509 S.W.2d 823 (1973).

Statute enhancing penalties for successive offenses of drunken driving was not an ex post facto law as applied to provide enhanced penalties against a driver whose third offense occurred after the effective date of the act but whose first two offenses occurred prior to such date. *Sims v. State*, 262 Ark. 288, 556 S.W.2d 141 (1977).

Sentencing procedure is controlled by the statutes in effect on the date of the commission of the crime. *Easley v. State*, 274 Ark. 215, 623 S.W.2d 189 (1981).

Arkansas’s bifurcated sentencing procedures in §§ 5-4-103 and 16-97-103 are not violative of the ex post facto clause in the United States Constitution or this section. *Diffey v. State*, 319 Ark. 669, 894 S.W.2d 564 (1995).

The ex post facto clause does not prohibit the retroactive application of a measure that disadvantages an accused by denying him only the opportunity to reduce his sentence. *Duncan v. State*, 337 Ark. 306, 987 S.W.2d 721 (1999).

—Retirement Laws.

Where only the rights of anyone who became a member of the retirement sys-

tem after the effective date of the amendment were governed by the law as so amended, there was no basis on which to classify the section as ex post facto legislation. *Jones v. Cheney*, 253 Ark. 926, 489 S.W.2d 785 (1973).

There was no violation of the prohibition against ex post facto laws in the application of § 14-42-117 to a person whose right to retirement benefits did not vest prior to the enactment of the statute. *Robinson v. Taylor*, 342 Ark. 459, 29 S.W.3d 691 (2000).

Forfeiture of Estate.

A beneficiary may recover on a life insurance policy on life of insured executed for a crime where the policy does not specifically exempt the insurer from liability. *Progressive Life Ins. Co. v. Dean*, 192 Ark. 1152, 97 S.W.2d 62 (1936).

Jury Instructions.

Giving a jury the amended version of a jury instruction, where the amendment occurred after the crime was allegedly committed and the version as amended made it easier for the state to prove its case, violated the ex post facto clause. *Napier v. State*, 74 Ark. App. 272, 46 S.W.3d 565 (2001).

Cited: *Garrett v. Faubus*, 230 Ark. 445, 323 S.W.2d 877 (1959); *Forrest City Mach. Works, Inc. v. Aderhold*, 273 Ark. 33, 616 S.W.2d 720 (1981); *Cooper v. State*, 278 Ark. 394, 645 S.W.2d 950 (1983); *Parker v. Corrothers*, 750 F.2d 653 (8th Cir. 1984); *Gunter Bros. Lumber Co. v. Launius*, 11 Ark. App. 191, 669 S.W.2d 205 (1984); *Deaton v. State*, 283 Ark. 79, 671 S.W.2d 175 (1984); *State v. Townsend*, 314 Ark. 427, 863 S.W.2d 288 (1993).

§ 18. Privileges and immunities — Equality.

The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

RESEARCH REFERENCES

ALR. Public utilities — validity of preferential rates for elderly or low-income persons. 29 ALR 4th 615.

Preference given to employment of residents by contractors or subcontractors

engaged in, or awarded contracts for, construction of public works or improvements. 36 ALR 4th 941.

Validity, construction, and application of state statute forbidding unfair trade

practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like. 41 ALR 4th 675.

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 777 et seq.

Ark. L. Rev. Gitelman and McIvor, Domicile, Residence and Going to School in Arkansas, 37 Ark. L. Rev. 843.

Note, Dupree v. Alma School District No. 30: Mandate for an Equitable State Aid Formula, 37 Ark. L. Rev. 1019.

Comment, Does Arkansas Code Section 5-14-122 Violate Arkansas's Constitutional Guarantee of Equal Protection?, 51 Ark. L. Rev. 521.

C.J.S. 16B C.J.S., Constitutional Law, § 652 et seq.

UALR L.J. Notes, Constitutional Law — Equal Protection and School Funding in Arkansas, Dupree v. Alma School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1953), 6 UALR L.J. 541.

Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

CASE NOTES

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In General.

The equal protection clause does not prohibit legislation that recognizes degrees of evil, nor does it require that things which are different in fact or opinion be treated in law as though they were the same. *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

Adoption Proceedings.

In proceeding on petition for adoption, the probate court erred in denying minor mother's petition to annul an interlocutory decree of adoption where the minor mother was not served with process prior to the entry of the interlocutory order and where the decree was rendered without a defense by a guardian ad litem. *Schrum v. Bolding*, 260 Ark. 114, 539 S.W.2d 415 (1976) (decision under prior law).

Business.

An act or ordinance which arbitrarily and unreasonably discriminates between different modes of conducting the same business is unconstitutional unless there is something in the one mode which makes it dangerous to the public. *Rebsamen Motor Co. v. Phillips*, 226 Ark. 146, 289 S.W.2d 170 (1956).

—Licensing.

License or privilege taxes must be imposed equally and impartially on all persons pursuing the same avocation or exercising the same privileges and the legislature may not under the pretense of a license fee or tax impose unequal taxes on persons similarly situated. Ex parte

Deeds, 75 Ark. 542, 87 S.W. 1030 (1905); Rebsamen Motor Co. v. Phillips, 226 Ark. 146, 289 S.W.2d 170 (1956); Clinton v. GMC, 229 Ark. 805, 318 S.W.2d 577 (1958).

—Gambling.

The operation of a dog track with legalized gambling, is unquestionably a privilege which the state might prohibit altogether and, thus, the state may impose certain conditions upon the exercise of such a privilege which are beyond those that may be imposed upon the enjoyment of matters of common right. *Rodgers v. Southland Racing Corp.*, 247 Ark. 1115, 450 S.W.2d 3, appeal dismissed, 400 U.S. 809, 91 S. Ct. 42, 27 L. Ed. 2d 37 (1970).

—Price Fixing.

A statute fixing price, wages, and hours of barbers violates the privileges and immunities clause of the Constitution. *Noble v. Davis*, 204 Ark. 156, 161 S.W.2d 189 (1942).

Classification of Employees.

Legislation granting additional pay to retired policemen for accumulated holidays and sick leave is not unconstitutional as singling out certain employees for special privileges not afforded all city employees since the legislative classification was founded upon a reasonable basis and operated uniformly upon the class to which it applied. *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977).

Corporations.

A corporation is not a citizen within the meaning of the equal privileges and immunities clause of the Constitution. *Chicago, R.I. & Pac. R.R. v. State*, 86 Ark. 412, 111 S.W. 456 (1908), *aff'd*, 219 U.S. 453, 31 S. Ct. 275, 55 L. Ed. 290 (1911); *State ex rel. Moose v. Southern Sand & Material Co.*, 113 Ark. 149, 167 S.W. 854 (1914); *Saint Louis & S.F.R.R. v. State*, 120 Ark. 182, 179 S.W. 342 (1915).

The state reserves the power to amend or repeal general laws which operate to amend or repeal the charter of a corporation. *Ozan Lumber Co. v. Biddie*, 87 Ark. 587, 113 S.W. 796 (1908).

Fish and Game.

An act denying non-residents of certain counties the right to fish in those counties without a license confers a special privilege upon the residents of those counties

and is unconstitutional. *Lewis v. State*, 110 Ark. 204, 161 S.W. 154 (1913).

Where a general law denies the right to export a game to the people of some counties, a law granting that privilege to citizens of a particular county is invalid. *Jonesboro, L.C. & E.R.R. v. Adams*, 117 Ark. 54, 174 S.W. 527 (1915).

The legislature may, in the enactment of laws for the preservation of game and fish, exempt certain sections of the state where such regulation is unnecessary. *Jonesboro, L.C. & E.R.R. v. Adams*, 117 Ark. 54, 174 S.W. 527 (1915).

The restriction of resident game licenses to those persons having qualifications of legal voters violates the constitutional prohibition of legislative discrimination between classes of citizens. *State v. Johnson*, 172 Ark. 866, 291 S.W. 89 (1927).

Governmental Agencies.

A levee district is a governmental agency, is not a citizen, and is not granted privileges within the constitutional meaning, but its grant is of powers in the nature of duties. *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912).

Gratuities.

Statute permitting clerical and administrative employees of teacher and education associations to participate in teacher retirement program wherein state pays the employer's portion of the retirement are unconstitutionally expending public funds for a private purpose. *Chandler v. Board of Trustees*, 236 Ark. 256, 365 S.W.2d 447 (1963).

Guest Statute.

The Guest Statute denying recovery to a guest except for wilful and wanton negligence is not unconstitutional as to violate privileges and immunities for having no fair and rational relation to the legislative objectives sought to be controlled. *White v. Hughes*, 257 Ark. 627, 519 S.W.2d 70, appeal dismissed, 423 U.S. 805, 96 S. Ct. 15, 46 L. Ed. 2d 26 (1975); *Davis v. Cox*, 268 Ark. 78, 593 S.W.2d 180 (1980).

Livestock.

The legislature may prohibit stock from running at large within certain prescribed territory. *Hendricks v. Block*, 80 Ark. 333, 97 S.W. 63 (1906).

Local Option.

An act providing that a license to sell liquor shall be granted only upon petition of a majority of adult white inhabitants of a city does not violate the Constitution. *McClure v. Topf & Wright*, 112 Ark. 342, 166 S.W. 174 (1914); *Wade v. Horner*, 115 Ark. 250, 170 S.W. 1005 (1914).

A city ordinance which allows an arbitrary discrimination is unconstitutional and void. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

Medical Malpractice.

Because plaintiff did not make any convincing argument for the contention that the Arkansas Medical Malpractice Act violates equal protection clause, and because § 16-114-206 does no more than state the common-law elements of a claim for negligence in the medical-malpractice context, the argument did not appear to be well-founded. *Haase v. Starnes*, 323 Ark. 263, 915 S.W.2d 675 (1996), appeal dismissed, 337 Ark. 193, 987 S.W.2d 704 (1999).

Oil and Gas Lease.

A statute which provides for the partition of oil and gas leasehold interest held in fee by cotenants does not grant special privileges. *Overton v. Porterfield*, 206 Ark. 784, 177 S.W.2d 735 (1944).

Pollution Control.

There is a rational basis for distinguishing between air pollution attributable to commercial incinerators for burning waste materials, on the one hand, and agricultural clearing and residential fireplaces and grills on the other; therefore, the Water and Air Pollution Control Act does not deny equal protection of the law under this section and the Fourteenth Amendment of the United States Constitution. *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

Price Fixing Legislation.

Statute fixing prices at which liquor could be sold was a valid exercise of the police power and did not violate this section. *Gipson v. Morley*, 217 Ark. 560, 233 S.W.2d 79 (1950).

Professions.

An act requiring dentists to register with a board of examiners and be certificated does not deprive a citizen of the

right to follow a lawful vocation. *Gosnell v. State*, 52 Ark. 228, 12 S.W. 392 (1889).

Section was not violated by former provision giving nonresident attorneys the right to practice in this state where Tennessee attorney acted as associate counsel to resident attorneys in particular medical malpractice case. *McKenzie v. Burris*, 255 Ark. 330, 500 S.W.2d 357 (1973).

Property Rights.

One who acquires a life estate by will or deed does not have the same right of partition or commutation as one who holds a life estate in land by virtue of dower or curtesy, and the owner of a life estate created by a will or deed is not denied equal protection of or equal rights under the law because of the different treatment. *Staggs v. Staggs*, 277 Ark. 315, 641 S.W.2d 29 (1982).

Public School Financing.

The statutory method of financing public schools under the Minimum Foundation Program and of vocational funding, under which system the local tax base determined the amount of state funding received by a district and school districts were required to establish vocational programs with local funds before receiving state funds for such programs, violated this section. *Dupree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983).

The school funding system in place between 1994 and 2000 violated the equality provisions of Ark. Const. Art. 2, §§ 2, 3, and this section because the system did not ensure the equality of actual expenditures of funds spent on the students of each school district by the state; however, the state was given until January 1, 2004, to create a system that ensured equality of funding. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

Redevelopment.

Statute providing relief from dangers to public health in cities and rural areas by elimination of slums through the creation of housing authorities was not unconstitutional as the purpose to be served was a public one. *Kerr v. East Cent. Arkansas Regional Hous. Auth.*, 208 Ark. 625, 187 S.W.2d 189 (1945).

The Urban Development Law does not violate this section. *Rowe v. Housing*

Auth., 220 Ark. 698, 249 S.W.2d 551 (1952).

Residency Requirements.

School district residency policy did not violate teacher's rights of equal protection under this section. *McClelland v. Paris Pub. Sch.*, 294 Ark. 292, 742 S.W.2d 907 (1988).

Section 6-18-203(b), permitting children or wards to enroll in either their home school district or the district where their parents or guardians teach, rests upon a rational basis and is not unconstitutional under this section of the constitution concerning equality in privileges and immunities. That which might facilitate a teacher's transportation of his children, or enables them to be nearer to the teacher, or to each other, during school hours, may well be deemed useful in alleviating problems which might otherwise distract a teacher or necessitate his withdrawal from active teaching. *Love v. Hill*, 297 Ark. 96, 759 S.W.2d 550 (1988).

Sodomy.

The portion of an Arkansas statute criminalizing specific acts of private, consensual sexual intimacy between persons of the same sex is an unconstitutional violation of Arkansas's Equal Rights Amendment. *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002).

Special Laws.

An act purporting to relieve county collectors for shortages in a certain year, where only one action has been filed and where the act is designed to apply to only one county, is unconstitutional as a special law. *State ex rel. Attorney Gen. v. Lee*, 193 Ark. 270, 99 S.W.2d 835 (1937).

Where the violation of an ordinance depended on whether two or more neighbors had filed a written petition, it was in conflict with this article of the Constitution. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

City ordinance which prohibited use of certain streets by heavy trucks but contained exception permitting residents to so use such streets to reach their homes did not amount to an unconstitutional discrimination based on residence alone as against a nonresident seeking to so use such streets for business purposes. *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955).

Where the length of the line of the railroad sought to be removed has no fair or substantial relation to the stated object sought to be accomplished by the legislation, this section is violated. *Arkansas Commerce Comm. v. Arkansas & Ozarks Ry.*, 235 Ark. 89, 357 S.W.2d 295 (1962).

Award of workers' compensation benefits under provision for hernias rather than total disability did not create an unreasonable classification that was void under this section. *Smith v. Riceland Food*, 261 Ark. 10, 545 S.W.2d 604 (1977).

The rational basis test is used in reviewing government actions under this section since whether an act is special depends upon whether, by force of an inherent limitation, it arbitrarily separates some person, place, or thing from those upon which, but for such separation, it would operate. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Statute of Limitation.

Statute barring actions for injury or death from faulty design or construction of improvements to real property against the persons furnishing such design or construction after four years does not violate this section by discriminating owners and materialmen as a vital distinction exists between the two groups. *Carter v. Hartenstein*, 248 Ark. 1172, 455 S.W.2d 918 (1970), appeal dismissed, 401 U.S. 901, 91 S. Ct. 868, 27 L. Ed. 2d 800 (1971).

This section was not violated by legislation providing 18-month limitation period for bringing claims for charges for certain medical services. *HCA Medical Servs. of Midwest, Inc. v. Rodgers*, 292 Ark. 359, 730 S.W.2d 229 (1987).

Taxation.

—Business.

A statute entitling veterans to engage in business without paying taxes for the privilege of so doing is unconstitutional as a grant of a privilege to a class of citizens. *Edelmann v. City of Fort Smith*, 194 Ark. 100, 105 S.W.2d 528 (1937).

—Gasoline Tax.

To permit operators of trucks and buses for hire to enter the state and be exempted from paying taxes on the first 20 gallons of gasoline they use which they brought into the state is not an arbitrary discrimination. *Thompson v. Continental S. Lines*, 222 Ark. 108, 257 S.W.2d 375 (1953).

—Income Tax.

The imposition of a progressive income tax does not deny the equal protection of the laws. *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929).

An income tax statute exempting corporations and not individuals from taxation on income derived from sources outside the state is neither arbitrary nor discriminatory. *Dunklin v. McCarroll*, 199 Ark. 800, 136 S.W.2d 675 (1940).

The court could reasonably conceive of lawful purposes for the state's classification scheme in providing tax exemptions for retirement income of government employees since the state's classification conferred a benefit upon public employees which was available to all workers of a certain calling and class throughout Arkansas, and this section was not violated. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

—Mass Communications.

A tax which discriminates between mass communicators delivering substantially the same service runs afoul of the constitution; thus, § 26-52-301(3)(D)(i), which levies a tax on cable television enterprises but does not tax the proceeds resulting from the "unscrambling" of satellite signals, a similar service, imposes a tax which cannot pass muster. *Medlock v. Pledger*, 301 Ark. 483, 785 S.W.2d 202 (1990), *aff'd in part, rev'd in part*, 499 U.S. 439, 111 S. Ct. 1438, 113 L. Ed. 2d 494 (1991).

The legislature may have intended, in the enactment of a state sales tax on certain types of telecommunications service while excepting other in Section 2 of Act 27 of 1987, codified at § 26-52-301, to encourage large volume users of telephone service, i.e., Wide-area Telecommunications Service (WATS) subscribers, to remain or relocate in Arkansas. Such a basis for the legislation would be rationally related to achieving a legitimate governmental objective and, therefore, the tax is constitutional. *Bosworth v. Pledger*, 305 Ark. 598, 810 S.W.2d 918, *cert. denied*, 502 U.S. 995, 112 S. Ct. 617, 116 L. Ed. 2d 639 (1991).

—Property Transfers.

This section is not violated by an excise tax upon real estate transfers as equality requires only that the tax be collected

impartially of all persons in like circumstances. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

—Road Tax.

A road tax may be imposed on persons of certain ages in certain districts without giving the privilege of doing road work in lieu thereof, without conferring a privilege or immunity on a class of citizens unequally. *Harper v. Brooksher*, 153 Ark. 480, 240 S.W. 729 (1922).

—Use Tax.

A statute providing for the taxation of wagons used for the delivery of coal oil imposes a discriminatory tax since a tax classification can not be based on use unless such use affords a substantial ground for distinction. *Waters-Pierce Oil Co. v. City of Hot Springs*, 85 Ark. 509, 109 S.W. 293 (1908).

—Vehicles for Hire.

Section providing a tax on vehicles for hire specifically provides that the tax is for the privilege of using public roads and highways, and legislative classification for the purpose of taxation of a privilege is proper as long as there shall not be a discrimination between persons in like situations and pursuing the same class of occupation. *Potts v. McCastlain*, 240 Ark. 654, 401 S.W.2d 220, *cert. denied*, 385 U.S. 946, 87 S. Ct. 319, 17 L. Ed. 2d 225 (1966).

Zoning.

The prohibition of the operation of any billiard hall or poolroom for hire within three miles of a school or church in certain counties is not the granting of a privilege or immunity not applying to all on the same terms. *Caraway v. State*, 143 Ark. 48, 219 S.W. 736 (1920).

Cited: *Union Carbide & Carbon Corp. v. White River Distribs., Inc.*, 224 Ark. 558, 275 S.W.2d 455 (1955); *Thornbrough v. Williams*, 225 Ark. 709, 284 S.W.2d 641 (1955); *Goodloe v. Goodloe*, 253 Ark. 550, 487 S.W.2d 593 (1972); *Swafford v. Tyson Foods, Inc.*, 2 Ark. App. 343, 621 S.W.2d 862 (1981) (decision prior to 1981 amendment); *Gay v. Rabon*, 280 Ark. 5, 652 S.W.2d 836 (1983); *Jackson v. Ozment*, 283 Ark. 100, 671 S.W.2d 736 (1984); *Camp v. State*, 288 Ark. 269, 704 S.W.2d 617 (1986); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909

(1989); *Medlock v. Pledger*, 305 Ark. 610, 808 S.W.2d 785 (1991); *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993); *Cook v. State*,

321 Ark. 641, 906 S.W.2d 681 (1995); *O'Neill v. State*, 322 Ark. 299, 908 S.W.2d 637 (1995); *Roberts v. State*, 324 Ark. 68, 919 S.W.2d 192 (1996).

§ 19. Perpetuities and monopolies.

Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this State.

RESEARCH REFERENCES

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UALR L.J. 225.

CASE NOTES

ANALYSIS

Applicability.

Monopolies.

- Common carriers.
 - Counties.
 - Franchises.
 - Hospitals.
 - Liquor licenses.
 - Municipal ordinances.
 - Price fixing.
 - Sanitation services.
 - Taxi companies.
 - Zoning.
- ##### Perpetuities.
- Assessment covenant.
 - Options.
 - Reversions.

Applicability.

This section does not apply to a governing body. *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997).

Monopolies.

The anti-monopoly provision in the Constitution is to be read and considered along with the police powers and public welfare powers; but when there is a clear showing of absence of the proper exercise of the police and welfare powers then, the questioned law should not be suffered to stand. *North Little Rock Transp. Co. v. City of North Little Rock*, 207 Ark. 976, 184 S.W.2d 52 (1944).

The Unfair Practices Act making it unlawful for one engaged in the distribution of a commodity of general use or consumption to discriminate between different sec-

tions, communities or cities, or portions thereof, with intent to destroy competition, by selling at a lower rate in one such section than in another after making allowance for difference in grade, quality or quantity and the actual cost of transportation, was a proper exercise of the police power and constitutional. *Concrete, Inc. v. Arkhola Sand & Gravel Co.*, 230 Ark. 315, 322 S.W.2d 452 (1959).

Although the language of this section prohibits monopolies, it does not create a private cause of action. *Baxley-Delamar Monuments, Inc. v. American Cem. Ass'n*, 843 F.2d 1154 (8th Cir. 1988).

—Common Carriers.

Monopolies in the field of common carriers are repulsive and unconstitutional as competition is mandatory for the best service of public convenience. *North Little Rock Transp. Co. v. City of North Little Rock*, 207 Ark. 976, 184 S.W.2d 52 (1944).

—Counties.

There is no legal authority that prevents a county from having the exclusive right to collect solid waste. *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997).

—Franchises.

A five-year franchise for limousine concession at airport does not violate this section where franchise holder is bound to provide service and there is not enough business for such service to be maintained on a competitive basis. *Bridges v. Yellow*

Cab Co., 241 Ark. 204, 406 S.W.2d 879 (1966).

—Hospitals.

Complaint alleging conspiracy in that plaintiff's chief of staff was denied membership in county medical society, and thereby denied the right to become a member of the staff of certain other hospitals and prevented from receiving referrals of patients from other physicians, did not charge a violation of this section since no allegations were made tending to show the creation of a monopoly. *Elizabeth Hosp. v. Richardson*, 167 F. Supp. 155 (W.D. Ark. 1958), *aff'd*, 269 F.2d 167 (8th Cir.), *cert. denied*, 361 U.S. 884, 80 S. Ct. 155, 4 L. Ed. 2d 120 (1959).

—Liquor Licenses.

The county court has the discretion to grant or entirely refuse license to sell liquor; but, if some persons are licensed, other applicants may not be arbitrarily refused if they comply with the requirements of the statute. *Ex parte Levy*, 43 Ark. 42 (1884).

—Municipal Ordinances.

The municipal ordinance which requires that all printed matter, blank books, and stationery used by the city bear the union label of the Allied Printing Trades Council created a virtual monopoly in the city's printing business and cannot be reconciled with the controlling provisions of the Constitution and statutes. *Upchurch v. Adelsberger*, 231 Ark. 682, 332 S.W.2d 242 (1960).

A law demanding competition in the letting of public work is intended to secure unrestricted competition among bidders, and where the effect of an ordinance is to prevent or restrict competition and thus increase the cost of the work, it manifestly violates such law and is void, as are all proceedings had thereunder. *Upchurch v. Adelsberger*, 231 Ark. 682, 332 S.W.2d 242 (1960).

—Price Fixing.

The state legislature may prohibit foreign insurance companies from doing business within the state if they are members of any rate fixing combination anywhere in the world. *Hartford Fire Ins. Co. v. State*, 76 Ark. 303, 89 S.W. 42 (1905).

A statute vesting power to fix prices, wages, and hours for barber shops in a

state board of health is unconstitutional within the meaning of this section. *Noble v. Davis*, 204 Ark. 156, 161 S.W.2d 189 (1942).

Statute fixing prices at which liquor could be sold was a valid exercise of the police power and did not violate this section. *Gipson v. Morley*, 217 Ark. 560, 233 S.W.2d 79 (1950).

—Sanitation Services.

A city is authorized to enter into proper exclusive contracts for sanitation services. *Smith v. City of Springdale*, 291 Ark. 63, 722 S.W.2d 569 (1987).

—Taxi Companies.

Statute providing that the governing bodies of first class cities shall notify all taxicab operators of the filing of an application by another, giving them time to inaugurate additional required services and rejecting such application upon the furnishing of said services, were unconstitutional in that they created a monopoly. *North Little Rock Transp. Co. v. City of North Little Rock*, 207 Ark. 976, 184 S.W.2d 52 (1944).

—Zoning.

The refusal to rezone the property in question which was adjacent to property which was already zoned for business was unconstitutional for creating a monopoly. *City of Blytheville v. Thompson*, 254 Ark. 46, 491 S.W.2d 769 (1973).

Perpetuities.

Where a defendant in the federal court claimed that the statute as applied to him violated this section of the Constitution, he raised Arkansas constitutional questions which had not been decided by the Arkansas Supreme Court, and the federal court therefore retained the case on the docket so that appropriate action could be commenced in the state court to determine these constitutional questions. *Union Carbide & Carbon Corp. v. White River Distribs., Inc.*, 118 F. Supp. 541 (E.D. Ark. 1954).

Perpetuities are forbidden by this section. *Roemhild v. Jones*, 239 F.2d 492 (8th Cir. 1957); *Broach v. City of Hampton*, 283 Ark. 496, 677 S.W.2d 851 (1984).

This section forbids "perpetuities," but it does not describe them; the description comes from common law. *Otter Creek Dev. Co. v. Friesenhahn*, 295 Ark. 318, 748 S.W.2d 344 (1988).

The rule against perpetuities is alive, well, and fully applicable to terminate interests where those interests do not vest within 21 years after some life in being at the time of the creation of the instrument; however, the rule has no application to reversionary interests, which remain in the transferor and heirs. *Collins v. Church of God of Prophecy*, 304 Ark. 37, 800 S.W.2d 418 (1990).

—Assessment Covenant.

Where the bill of assurance of property owners' association under which the land was purchased provided that the assessment covenant should remain outstanding for a term of 26 years and for successive ten year periods thereafter, until an instrument should be signed and recorded by the then owners of two-thirds of the lots or living units, such covenant did not constitute a perpetuity contrary to this section. *Kell v. Bella Vista Village Property Owners' Ass'n*, 258 Ark. 757, 528 S.W.2d 651 (1975).

—Options.

Deed reserving option to repurchase said land from the grantee if he should at

any time offer the same for sale, at the same price and amount grantee is now paying for same, did not violate the rule against perpetuities where there was nothing to show that the parties intended the option to continue beyond the lifetime of grantee. *Roemhild v. Jones*, 239 F.2d 492 (8th Cir. 1957).

—Reversions.

Where the deed provided that the property shall revert to the heirs of the grantor when no longer used for school purposes, no interest being expressly reserved to grantor's wife, these words are clearly properly construed words of purchase rather than words of limitation since the condition did happen during the lifetime of the grantor's wife, and the common law rule against perpetuities is applicable. *McCrory School Dist. v. Brogden*, 231 Ark. 664, 333 S.W.2d 246 (1960).

Cited: *Morley v. Berg*, 218 Ark. 195, 235 S.W.2d 873 (1951); *Union Carbide & Carbon Corp. v. White River Distribs., Inc.*, 224 Ark. 558, 275 S.W.2d 455 (1955); *Lincoln v. Arkansas Pub. Serv. Comm'n*, 313 Ark. 295, 854 S.W.2d 330 (1993).

§ 20. Resident aliens — Descent of property.

No distinction shall ever be made by law, between resident aliens and citizens, in regard to the possession, enjoyment or descent of property.

CASE NOTES

In General.

An act denying to aliens incapable of becoming citizens the right to acquire,

possess, or transfer real estate is unconstitutional. *Applegate v. Lum Jung Luke*, 173 Ark. 93, 291 S.W. 978 (1927).

§ 21. Life, liberty and property — Banishment prohibited.

No person shall be taken, or imprisoned, or disseized of his estate, freehold, liberties or privileges; or outlawed, or in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land; nor shall any person, under any circumstances, be exiled from the State.

RESEARCH REFERENCES

ALR. Validity and application of statute authorizing forfeiture of use or closure of real property from which obscene materials have been disseminated or exhibited. 25 ALR 4th 395.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 ALR 4th 496.

Conviction of offense associated with

property seized necessary to support forfeiture. 38 ALR 4th 515.

Ark. L. Rev. Leflar, Liberty and Death: Advance Health Care Directives and the Law of Arkansas, 39 Ark. L. Rev. 375.

C.J.S. 16A C.J.S., Constitutional Law, § 506 et seq.

16C C.J.S., Constitutional Law, § 982 et seq.

UALR L.J. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

CASE NOTES

ANALYSIS

Exile from state.

Judgment of peers.

—Minors.

Judicial powers.

Opportunity to be heard.

Price fixing.

Taking of property.

Exile from State.

The constitutional provision against exile of persons from the state is not violated by a statute allowing the Governor to grant pardons on condition that the convicted person leave the state, never to return. *Ex parte Hawkins*, 61 Ark. 321, 33 S.W. 106 (1895).

No statute confers the power upon judges in passing sentence to require that defendant leave the state, neither does the Constitution grant such power. *Millsaps v. Strauss*, 208 Ark. 265, 185 S.W.2d 933 (1945).

A condition of probation would be stricken as improper court-ordered exile where the condition required that the appellant leave the state for seven years, except for two specified return trips each year of three days each. *Reeves v. State*, 339 Ark. 304, 4 S.W.3d 41 (1999).

Judgment of Peers.

The suspension of a county or township officer against whom an indictment or presentment is filed does not deprive the officer of property without the judgment of his peers or the law of the land. *Sumpter v. State*, 81 Ark. 60, 98 S.W. 719 (1906).

Statutes permitting the court to fix the punishment under certain circumstances are not unconstitutional. *Froman v. State*, 232 Ark. 697, 339 S.W.2d 601 (1960).

This section and Ark. Const., Art. 2, §§ 7 and 10 are not to be interpreted to prevent a court from fixing punishment in

certain cases. *Tharp v. State*, 294 Ark. 615, 745 S.W.2d 612 (1988).

—Minors.

The trial by the juvenile court of a minor is not a violation of his constitutional rights. *Martin v. State*, 213 Ark. 507, 211 S.W.2d 116 (1948).

The committing of a minor to the boys industrial school for delinquency is not detention, a punishment for crime, but discipline, education, and reformation. *Martin v. State*, 213 Ark. 507, 211 S.W.2d 116 (1948).

Judicial Powers.

Defendant's argument that the prohibition of Ark. Sup. Ct. & Ct. App. R. 5-2, prohibiting citation to unpublished opinions, violated his right of due process under Ark. Const. art. II, §§ 8 and 21, was rejected because the federal judicial power clause had never before been construed to limit courts in the manner in which they conduct their business, and the same could be said for Arkansas's judicial article. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

Opportunity to Be Heard.

A statute regulating the sale of firearms does not deprive any man of his property, or of a privilege not subject to restraints prescribed by the state for the common good. *Dabbs v. State*, 39 Ark. 353 (1882).

The section of the anti-trust act which provides that a defendant's answer be stricken out under certain circumstances relates to a matter of procedure and does not violate the Constitution. *Hammond Packing Co. v. State*, 81 Ark. 519, 100 S.W. 407, 100 S.W. 1199 (1907), *aff'd*, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).

If an act repealing certain acts and providing for the allowance of claims against the district involved be presumed

a legislative assessment of benefits exceeding the cost of the improvement, then the act of the legislature in abolishing the district and burdening property owners with preliminary expenses is unconstitutional as depriving property owners of their property without due process of law. *Thibault v. McHaney*, 119 Ark. 188, 177 S.W. 877 (1915).

An act providing for the appointment of appraisers whose appraisal of land taken for a street is conclusive as to the value of property taken, and without appeal, is unconstitutional as taking property without due process. *Hoxie v. Gibson*, 155 Ark. 338, 245 S.W. 332 (1922).

Statute providing for extinguishing estates tail did not violate this section. *Anderson v. Webb*, 241 Ark. 233, 406 S.W.2d 871 (1966).

Repossession of collateral by a secured party does not violate any of the rights guaranteed by this section where the repossession procedure arises out of the express written agreement of the parties and where the collateral is repossessed peacefully. *Teeter Motor Co. v. First Nat'l Bank*, 260 Ark. 764, 543 S.W.2d 938 (1976).

Fundamental requirements of due process require the opportunity to be heard at a meaningful time and a meaningful place before a person may be deprived of life, liberty, or property. *Franklin v. State*, 267 Ark. 311, 590 S.W.2d 28 (1979).

Where in a divorce action the husband did not have prior notice that he might have to post a performance bond, nor was he permitted the right to a hearing on the posting of the bond, the trial court lacked jurisdiction to require him to post a performance bond of \$4,000 before leaving the courtroom since, before the husband

could be denied his rights, he had to be given notice and an opportunity to be heard. *Godwin v. Godwin*, 268 Ark. 364, 596 S.W.2d 695 (1980).

Price Fixing.

Statute fixing prices at which liquor could be sold was a valid exercise of the police power and did not violate this section. *Gipson v. Morley*, 217 Ark. 560, 233 S.W.2d 79 (1950).

Taking of Property.

The seizure of a gun was not a taking proscribed by the Constitution where the gun was evidence of a violation of the law. *Rainey v. Hartness*, 339 Ark. 293, 5 S.W.3d 410 (1999).

Insureds had no protected property right in any coverage beyond the lapse date and, thus, there was no protected property or liberty interest that could have given rise to a due process claim, as contended by the insureds, who argued that their rights were violated when the insurer failed to give them actual notice of non-renewal; there was no state action because the action was taken by an insurance company, and the use of the United States mail to give notice under § 23-89-306 did not rise to the level of state action. *Johnson v. Encompass Ins. Co.*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 620 (Nov. 20, 2003).

Cited: *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Honor v. Yamuchi*, 307 Ark. 324, 820 S.W.2d 267 (1991); *Johnson v. State*, 328 Ark. 526, 944 S.W.2d 115 (1997); *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002); *In re Brandenburg*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 784 (Oct. 29, 2003).

§ 22. Property rights — Taking without just compensation prohibited.

The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance establishing rent control

benefit or rent subsidy for elderly tenants.
5 ALR 4th 922.

Assemblage or plottage as factor affecting value in eminent domain proceedings. 8 ALR 4th 1202.

Measure and elements of lessee's compensation for condemnor's taking or damaging of leasehold, generally. 17 ALR 4th 337.

Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR 4th 756.

Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain. 21 ALR 4th 765.

Possibility of overcoming specific obstacles as element in determining existence of necessary public use. 22 ALR 4th 840.

Airport operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Public improvements damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

Validity and application of statute authorizing forfeiture of use or closure of real property from which obscene materials have been disseminated or exhibited. 25 ALR 4th 395.

Compensability of loss of view from owner's property — state cases. 25 ALR 4th 671.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner. 26 ALR 4th 68.

Public taking of sports or entertainment franchise or organization as taking for public purpose. 30 ALR 4th 1226.

Towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways. 32 ALR 4th 728.

Measure and elements of damages or compensation for condemnation of public transportation system. 35 ALR 4th 1263.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 ALR 4th 496.

Conviction of offense associated with property seized necessary to support forfeiture. 38 ALR 4th 515.

Seizure of property as evidence in criminal prosecution or investigation as compensable taking. 44 ALR 4th 366.

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 581 et seq.

26 Am. Jur. 2d, Em. Dom., § 6.

Ark. L. Rev. Regulation of Urban Non-Conforming Uses in Arkansas: Limitation and Termination, 16 Ark. L. Rev. 270.

Recent Developments in Eminent Domain in Arkansas, 19 Ark. L. Rev. 121.

Eminent Domain — Highway Location and Existing Restrictive Covenants, 19 Ark. L. Rev. 183.

State Immunity and the Arkansas Claims Commission, 21 Ark. L. Rev. 180.

Reimbursement of Attorney's Fees in Arkansas upon Dismissal of Condemnation Proceedings, 22 Ark. L. Rev. 181.

Zoning — The Expanding Business District Doctrine in Arkansas: An Obstacle to Land Use Planning, 28 Ark. L. Rev. 262.

Acquisition of Public Recreational Access to Privately Owned Property: Devices, Problems, and Incentives, 29 Ark. L. Rev. 514.

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Wright, Damages or Compensation for Unconstitutional Land Use Regulations, 37 Ark. L. Rev. 612.

"Taking" a Look at Inverse Condemnation in Arkansas: Robinson v. City of Ashdown, 44 Ark. L. Rev. 519.

Note, Compound Pre-Judgment Interest as an Element of Just Compensation: Wilson v. City of Fayetteville, 47 Ark. L. Rev. 937.

C.J.S. 16A C.J.S., Constitutional Law, § 506 et seq.

16C C.J.S., Constitutional Law, § 982 et seq.

29A C.J.S., Em. Dom., § 3.

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Owen, Note: Local Government — Municipal Corporation — Annexation Invalidation, 2 UALR L.J. 105.

Survey, Attorney and Client, 14 UALR L.J. 257.

Note, Constitutional Law — Indigent Defense — Arkansas Statutory Fee and Expense Limitations Unconstitutional. Arnold v. Kemp, 306 Ark. 294, 813 S.W.2d 770 (1991), 14 UALR L.J. 595.

CASE NOTES

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In general.
 Adverse possession.
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 — Compensation of court-appointed counsel.
 — Contribution.
 — Divided ownership.
 — Interest.
 — Just compensation.
 — Manner of payment.
 — Market value.
 — Measure of damages.
 — Negligence.
 — Prior payment.
 — — Enjoining entry.
 — Property not taken.
 — Reduction in value.
 — Signs and billboards.
 — Validity of appropriation.
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 Contraband.
 Drainage ditches.
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 — Construction.
 — Dismissal.
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 Federal constitution.
 Fence districts.
 Fish and game.
 Levee districts.
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 Planning.
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 Public welfare.
 Railroads.
 Redevelopment.
 Riparian rights.
 Taking of property.
 Tort liability.
 Utility rates.
 Zoning.

In General.

The right of eminent domain is inherent in the government but the legislature is bound to provide a fair compensation to

the individual whose property is taken and, until a just indemnity is afforded, the power cannot be legally exercised. *Ex parte Martin*, 13 Ark. 198 (1853).

Private property cannot be taken for private use without consent of the owner, nor for public use without providing for just compensation. *Roberts v. Williams*, 15 Ark. 43 (1854).

The sovereign right of a state to condemn private property for public use involves the correlative right of an individual to just compensation for the property thus condemned. *Young v. Gurdon*, 169 Ark. 399, 275 S.W. 890 (1925).

It is the actual taking or damage of lands for public use which must be compensated under the Constitution, and not a plan to take or damage the land. *Watson v. Harris*, 214 Ark. 349, 216 S.W.2d 784 (1949); *Southwestern Water Co. v. Merritt*, 224 Ark. 499, 275 S.W.2d 18 (1955).

It is not necessary that the property should be completely taken in order to bring the case within the protection of the constitutional guaranty, it is only necessary that there be such serious interruption of the common and necessary use of the property as to interfere with the rights of the owner. *Shellnut v. Arkansas State Game & Fish Comm'n*, 222 Ark. 25, 258 S.W.2d 570 (1953).

This section does not mean that an individual is constitutionally guaranteed the right to do with such property as he wishes in all circumstances. The police power and health and welfare doctrines clearly permit restrictions on property use so as to prevent detriment to the rights of the public, and the private use of property can be restricted by zoning regulations. *Richardson v. City of Little Rock Planning Comm'n*, 295 Ark. 189, 747 S.W.2d 116 (1988).

Adverse Possession.

Where a railroad company acquired a right of way by prescription merely, its title is limited in extent to the land actually taken. *Little Rock & F.S.R.R. v. Greer*, 77 Ark. 387, 96 S.W. 129 (1906).

Where an owner permits what might otherwise have been a private road to be used as a school bus route for upwards of ten years and permits the county to repair

and maintain the road for a comparable period, he cannot be heard to complain that his property has been taken without compensation when the county judge declares the road to be a county road pursuant to statute and the declaration of public usage simply recognizes what the owner's actions have already created by sufferance. *Johnson v. Wylie*, 284 Ark. 76, 679 S.W.2d 198 (1984).

Annexation.

Statute is not unconstitutional on the ground that it did not provide for notice in annexation proceedings. *Hamilton v. Johnson County Bd. of Educ.*, 223 Ark. 803, 268 S.W.2d 873 (1954).

The annexation of lands for purposes of taxation only is prohibited by the Constitution. *Saunders v. City of Little Rock*, 262 Ark. 256, 556 S.W.2d 874 (1977).

Automobile Graveyards.

Statute which imposed a penalty for each day a person kept or maintained five nonoperative automobiles within one-half mile of a paved highway regardless of whether they could be seen or not was arbitrary and unreasonable. *Bachman v. State*, 235 Ark. 339, 359 S.W.2d 815 (1962).

Compensation.

The owner of land taken for railroad purposes is entitled to compensation immediately for all damages sustained, present and prospective. *Little Rock & F.S.R.R. v. Greer*, 77 Ark. 387, 96 S.W. 129 (1906).

The effect of the passage of an act requiring the payment of a fine by a railroad for its failure to erect a depot where the erection is impossible is to arbitrarily take property without just compensation. *State v. St. Louis, I.M. & S.R.R.*, 85 Ark. 422, 108 S.W. 508 (1908).

The condemnation of land for highway purposes by a county court creates ipso facto a valid claim for compensation in favor of the landowner against the county. *Independence County v. Lester*, 173 Ark. 796, 293 S.W. 743 (1927).

All damages incident to the construction of a sewer system and the digging of outlet ditches may be recovered by the property owners damaged. *Sewer Imp. Dist. No. 1 v. Jones*, 199 Ark. 534, 134 S.W.2d 551 (1939).

In condemnation cases the landowner is

limited to five items of damage: (1) the fair market value of the land appropriated; (2) damage which the construction of the levee will cause by the obstruction of natural drainage; (3) inconvenience of passing over the levee, ditch, drain or canal; (4) the value of crop and houses on the right of way injured or destroyed; and (5) damages shall be paid for any easement or flowage right or increased use or servitude. *Board of Dirs. v. Morledge*, 231 Ark. 815, 332 S.W.2d 822 (1960).

The landowner is entitled to damages as of the date when the act of taking is complete, that is, when his lands are actually entered and taken under the court order. *Arkansas State Hwy. Comm'n v. Dobbs*, 232 Ark. 541, 340 S.W.2d 283 (1960).

When the housing authority forces a property owner into state court to ask a jury to fix the price it must pay the owner and chooses to renege merely because the jury verdict is not to its liking, the trial court has the inherent right to require the housing authority to reimburse the owner. *Housing Auth. v. Amsler*, 239 Ark. 592, 393 S.W.2d 268 (1965).

Landowners whose property was condemned by the State Highway Commission and who litigated the property values determined by the commission had no constitutional right to recover attorneys' fees as part of their compensation in the absence of an authorizing statute. *Arkansas State Hwy. Comm'n v. Johnson*, 300 Ark. 454, 780 S.W.2d 326 (1989).

—Compensation of Court-Appointed Counsel.

The expense and fee caps, contained in § 16-92-108 (repealed), imposed upon court-appointed attorneys who represent indigent clients accused of crime are unconstitutional. *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991).

The statutory limitation of expenses in the sum of \$100.00, pursuant to § 16-92-108 (repealed), did not provide the necessary funds for the clients' defense and it would have constituted a taking to force the attorneys to finance these expenses out of their own pockets in order to provide effective assistance of counsel. *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991).

—Contribution.

The city would be liable for piling trees on plaintiff's property since the city can-

not damage private property without paying just compensation and the contractor was liable as a joint tortfeasor if he negligently piled the trees on the property and the trees had not been removed. *Waldron v. Huston*, 235 Ark. 553, 361 S.W.2d 556 (1962).

—Divided Ownership.

In deciding "just compensation" when there is a divided ownership in property in the condemnation suit, it is plain that a lease may be so advantageous to both parties that the combined market value of their separate estates exceeds what the land would be worth if the lease had not been made, thus, the "whole" of single ownership is not necessarily the "whole" of separate ownerships. *Arkansas State Hwy. Comm'n v. Fox*, 230 Ark. 287, 322 S.W.2d 81 (1959).

—Interest.

Under eminent domain proceedings just compensation includes interest from the date of entry. *Arkansas State Hwy. Comm'n v. Stupenti*, 222 Ark. 9, 257 S.W.2d 37 (1953).

For case discussing issue of whether just compensation under the Arkansas Constitution includes compound interest in land condemnation cases, see *Wilson v. City of Fayetteville*, 310 Ark. 154, 835 S.W.2d 837, modified on reh'g, 310 Ark. 164-A, 838 S.W.2d 366 (1992).

Where there was no need to enter the land to accomplish an objective and thus there was no actual entry onto the land, the date of taking was the date the condemnation was filed and the property valued, and interest was due therefrom. *Board of Comm'rs v. Rollins*, 57 Ark. App. 241, 945 S.W.2d 384 (1997).

—Just Compensation.

The words just compensation as used within the constitutional provision mean full compensation. *Arkansas State Hwy. Comm'n v. Stupenti*, 222 Ark. 9, 257 S.W.2d 37 (1953).

Although the majority of owners of a private water line voted in favor of selling it to a city for non-interest bearing second mortgage bonds payable solely from water revenues of the city, forcing the opposed minority to accept such offer would have violated their right to just compensation for their property. *Partlow v. Keasler*, 250 Ark. 219, 464 S.W.2d 589 (1971).

Jury verdict as to just compensation was not contrary to the evidence presented at trial and was not insufficient to indemnify landowner. *Baumeister v. City of Ft. Smith*, 23 Ark. App. 102, 743 S.W.2d 396 (1988).

—Manner of Payment.

The prohibition of the taking of land without compensation contemplated the payment in the usual method, which, in the case of demands against a county, is by warrant on the treasury. *Barton v. Edwards*, 120 Ark. 239, 179 S.W. 354 (1915).

Payment for lands taken for highway purposes or damaged incidentally must be from revenues of the fiscal year in which the obligation accrues. *Miller County v. Beasley*, 203 Ark. 370, 156 S.W.2d 791 (1941).

Power of the county to provide for payment of compensation to landowner whose land is condemned for highway purposes is limited by amendment No. 10 of the Constitution, which prohibits making of such payment except from current revenues coming in during the year in which the order of condemnation is entered, or possibly during the year in which the land is actually taken, and power of county to provide compensation is also limited by this section, which prohibits taking of private property for public use without just compensation. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

—Market Value.

The market value of property taken for a public use is to be determined from its availability for all valuable purposes. Thus, in an action to determine the value of property taken for a right of way of a railroad, it is competent to show its advantageous location for railroad purposes. *Gurdon & Ft. S.R.R. v. Vaught*, 97 Ark. 234, 133 S.W. 1019 (1911).

Compensation for land taken by condemnation proceedings should be measured by the fair cash market value. *Rinke v. Union Special School Dist. No. 19*, 174 Ark. 59, 294 S.W. 410 (1927).

The market value of the property taken for public use is to be determined by its availability for all valuable purposes. *Board of Dirs. v. Morledge*, 231 Ark. 815, 332 S.W.2d 822 (1960).

The measure of damages for the taking

of private property for highway purposes is the difference in the fair market value of the lands immediately before the taking and immediately after, less any enhancement in value resulting from the taking; in arriving at before and after value of the lands, a jury may consider every element that can fairly enter into the question of market value and which a businessman of ordinary prudence would consider before purchasing the property. *Barnes v. Arkansas State Hwy. Comm'n*, 10 Ark. App. 375, 664 S.W.2d 884 (1984).

—Measure of Damages.

Injury to personal property is not an element of damages. *Kansas City Southern R.R. v. Anderson*, 88 Ark. 129, 113 S.W. 1030 (1908).

The determination of the value of land taken by eminent domain is a question for the jury. *Fort Smith & Van Buren Dist. v. Scott*, 103 Ark. 405, 147 S.W. 440 (1912).

Where statute limits the amounts of damage for obstruction of landowner's natural drainage to an amount not to exceed the cost of artificial drainage, it is invalid since it fails to provide for just compensation. *Straub v. Mud Slough Drainage Dist. No. 1*, 216 Ark. 706, 227 S.W.2d 140 (1950).

The measure of damages for taking of land adjacent to highway is the value of the land taken plus damage to the land not taken less accruing benefits. *Clark County v. Mitchell*, 223 Ark. 404, 266 S.W.2d 831 (1954).

Net profit of a business operated on the damaged land is not a proper factor for consideration by the jury in assessing the damages. *Hot Spring County v. Crawford*, 229 Ark. 518, 316 S.W.2d 834 (1958).

In condemnation proceedings, the determination of the damage is to be measured by what the property was reasonably worth before the taking and what the remainder of the property is worth after the taking. *Board of Dirs. v. Morledge*, 231 Ark. 815, 332 S.W.2d 822 (1960).

Private property may not be damaged or appropriated for any public use by any agency, whether state or municipal, without just compensation, which is the fair market value of the property involved. *Burford v. Upton*, 232 Ark. 456, 338 S.W.2d 929 (1960); *Collier v. City of Springdale*, 733 F.2d 1311 (8th Cir. 1984), cert. denied, 469 U.S. 857, 105 S. Ct. 186, 83 L. Ed. 2d 120 (1984).

In arriving at the purchase price or the market price of condemned leased property, the use of the premises for agricultural purposes was at most only incidental to the market price, and the real basis was each respective ownership. *Arkansas State Hwy. Comm'n v. Polk*, 250 Ark. 377, 465 S.W.2d 671 (1971).

—Negligence.

Where property is taken for public use, districts are not liable for damage resulting from negligence of those acting for the public. *Gordon v. Camden Curb & Gutter Dist. No. 1*, 172 Ark. 94, 287 S.W. 761 (1926).

—Prior Payment.

If an adequate remedy exists for the landowner, a railroad may enter upon land required for a right of way before the assessment and payment of compensation. *Cairo & F.R.R. v. Turner*, 31 Ark. 494 (1876).

A county must be able to pay claims resulting from condemnation proceedings before engaging therein. *Independence County v. Lester*, 173 Ark. 796, 293 S.W. 743 (1927).

State highway commission may not enter into possession of private property under the right of eminent domain without first compensating the owner for damages sustained. *Arkansas State Hwy. Comm'n v. Partain*, 192 Ark. 127, 90 S.W.2d 968 (1936).

A condemnation judgment where the state assumed payment of bonds secured by a mortgage on a toll bridge is not void because it does not provide for the payment of the bondholders before taking the property. *White River Bridge Corp. v. State*, 192 Ark. 485, 92 S.W.2d 856 (1936).

Where property has been taken without the owner first being compensated for such taking, the owner may not coerce compensation by retaking the property, but is left without a remedy. *Federal Land Bank v. State Hwy. Comm'n*, 194 Ark. 616, 108 S.W.2d 1077 (1937).

An order condemning lands for public irrigation purposes should be granted to a corporation even though its assets are not at that time sufficient to pay for later damages to the land because the corporation cannot enter on the land until the compensation has been paid or secured. *Southwestern Water Co. v. Merritt*, 224 Ark. 499, 275 S.W.2d 18 (1955).

Advance payment is required as a condition precedent for taking land under an eminent domain proceeding. *Arkansas State Hwy. Comm'n v. Rich*, 235 Ark. 858, 362 S.W.2d 429 (1962).

—Enjoining Entry.

Adjacent property owners may enjoin viaduct construction when tender of payment for damages is not properly made. *Arkansas State Hwy. Comm'n v. Partain*, 192 Ark. 127, 90 S.W.2d 968 (1936).

A property owner may not sue the state or highway commission for damages but may restrain the taking of property until damages are paid or provisions made for payment. *Arkansas State Hwy. Comm'n v. Kincannon*, 193 Ark. 450, 100 S.W.2d 969 (1937); *Federal Land Bank v. State Hwy. Comm'n*, 194 Ark. 616, 108 S.W.2d 1077 (1937).

Entry upon condemned land affords the property owner an opportunity to exact payment or a guaranteeing deposit, and if neither is forthcoming, to seek an injunction; but if the owner allows the improvement to proceed, he must seek recovery from the county's credit from revenues for the current year. *Arkansas State Hwy. Comm'n v. Bush*, 195 Ark. 920, 114 S.W.2d 1061 (1938); *Miller County v. Beasley*, 203 Ark. 370, 156 S.W.2d 791 (1941).

Where state highway commission undertakes to appropriate land under condemnation decree, the owner has the right under the constitution, if the financial condition of the county is such that he may not receive the compensation from the county, to go into chancery and enjoin the appropriation of the land until the amount of compensation is agreed upon and either paid or secured. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

Action of trial court in issuing temporary restraining order against state highway commission restraining the letting of a contract for construction of a viaduct for which city was to acquire right-of-way was proper upon allegation of landowners that city was without funds to pay the damages of acquiring such right-of-way. *Keith v. Arkansas State Hwy. Comm'n*, 225 Ark. 86, 279 S.W.2d 292 (1955).

—Property Not Taken.

The reduction of value of property is the taking thereof and an owner whose property has been damaged but not physically

taken has the same right to compensation as the owner whose property has been actually occupied. *Pumpelly v. Green Bay Co.*, 80 U.S. (13 Wall.) 166, 20 L. Ed. 557 (1871); *Little Rock & F.S.R.R. v. Greer*, 77 Ark. 387, 96 S.W. 129 (1906); *Arkansas State Hwy. Comm'n v. Kincannon*, 193 Ark. 450, 100 S.W.2d 969 (1937).

The owner of property abutting a street is entitled to recover compensation for damage done to the property in lowering the grade of the street. *Little Rock & F.S.R.R. v. Greer*, 77 Ark. 387, 96 S.W. 129 (1906); *Dickerson v. Town of Okolona*, 98 Ark. 206, 135 S.W. 863 (1911); *Hot Spring County v. Bowman*, 229 Ark. 790, 318 S.W.2d 603 (1958).

When a railway condemned a right of way through the appellee's land, damages may be awarded for the value of the land and damages, if any, to the balance of the appellee's land. *Fort Smith Light & Traction Co. v. Schulte*, 109 Ark. 575, 160 S.W. 855 (1913).

The pollution of air over private property by offensive odors escaping from a septic tank, which impairs the land as residential property, is damage within the constitutional prohibition. *Sewer Imp. Dist. No. 1 v. Fiscus*, 128 Ark. 250, 193 S.W. 521 (1917).

A landowner whose home was surrounded by a new levee may recover for the market value of the land actually taken, damages sustained because of inconvenience and obstruction of drainage, and also for damages to crops and his home. *Miller Levee Dist. No. 2 v. Wright*, 195 Ark. 295, 111 S.W.2d 469 (1937).

The owner of land through which sewage ditches are dug is entitled to damages to extent that effluvium diminished the value of the land. *Sewer Imp. Dist. No. 1 v. Jones*, 199 Ark. 534, 134 S.W.2d 551 (1939).

The operation of a zoning ordinance to reduce the value of property by restricting its use is not the constitutionally prohibited taking of property, and compensation need not be made. *Little Rock v. Sun Bldg. & Developing Co.*, 199 Ark. 333, 134 S.W.2d 582 (1939).

Violation of restrictive covenant in residential area by proposed cloverleaf interchange upon highway would not render state liable for decreased value of adjoining landowner's property caused by completion of the interchange on adjacent

land which had been appropriated since the owners would have had no right of action otherwise. *Arkansas State Hwy. Comm'n v. McNeill*, 238 Ark. 244, 381 S.W.2d 425 (1964).

The imposition of the cost of screening appellee's junkyard was a deprivation of his vested property rights without just compensation and was unconstitutional as applied to him. *Arkansas State Hwy. Comm'n v. Turk's Auto Corp., Inc.*, 254 Ark. 67, 491 S.W.2d 387 (1973).

There was no compensable taking, appropriation, or damage where residential properties were devalued because the county had built a jail in the neighborhood. *Minton v. Craighead County*, 304 Ark. 141, 800 S.W.2d 707 (1990).

—Reduction in Value.

Where testing under subchapter 2-40-8, governing equine testing, caused a reduction in the value of defendant's horse but not a total diminution of value, there was no unconstitutional taking. *Winters v. State*, 301 Ark. 127, 782 S.W.2d 566 (1990).

—Signs and Billboards.

Where a provision of an ordinance governing signs stated that existing, nonconforming signs would be amortized by the city over a seven-year period, such provision amounted to a taking of property without just compensation in violation of this section. *City of Fayetteville v. S & H, Inc.*, 261 Ark. 148, 547 S.W.2d 94 (1977).

There is no reason to treat the loss of a profit generated by a competitive monopoly on nonconforming billboards any differently than the loss of the asset; the principle of amortization rests on the reasonable exercise of the police power, and the financial detriment imposed upon a property owner by the reasonable exercise of the police power does not constitute the taking of private property within the inhibition of the Constitution. *Donrey Communications Co. v. City of Fayetteville*, 280 Ark. 408, 660 S.W.2d 900 (1983), cert. denied, 466 U.S. 959, 104 S. Ct. 2172, 80 L. Ed. 2d 555 (1984).

—Validity of Appropriation.

Where Fish and Game Commission was granted funds by the legislature for preserving wildlife, and commission issued a voucher within two years from date of appropriation and paid same into court,

and project was approved by a federal agency, the Supreme Court will not determine whether appropriation act was invalid due to want of specific words of appropriation, or whether requirement for federal agency approval was likewise indefinite, as compensation for property to be taken for game preserve was adequately provided for as required by Constitution. *W.R. Wrape Stave Co. v. Arkansas State Game & Fish Comm'n*, 215 Ark. 229, 219 S.W.2d 948 (1949).

—Value Enhanced.

Where the public use for which a portion of land is taken makes the balance more valuable than the entire land before taking, the owner has received just compensation. Such benefit must be local, peculiar and special to the owner's land. *Paragould v. Milner*, 114 Ark. 334, 170 S.W. 78 (1914); *Cate v. Crawford County*, 176 Ark. 873, 4 S.W.2d 516 (1928).

The general rule, that the owner of land which is enhanced in value by the taking of a part for public use has received just compensation, does not apply in a case where assessments were made according to benefits received. *Driver v. Road Imp. Dist. No. 1*, 172 Ark. 340, 288 S.W. 711 (1926).

If benefits exceed damages, the property owner is not entitled to an award. *Cullum v. Van Buren County*, 223 Ark. 525, 267 S.W.2d 14 (1954); *McMahan v. Carroll County*, 238 Ark. 812, 384 S.W.2d 488 (1964).

Contraband.

Gaming devices may be destroyed under authority of statute, since they are a nuisance which the state has the power to control, without violating the taking of property without compensation provision of the Constitution. *Garland Novelty Co. v. State*, 71 Ark. 138, 71 S.W. 257 (1902); *Furth v. State*, 72 Ark. 161, 78 S.W. 759 (1904); *Bell v. State*, 212 Ark. 337, 205 S.W.2d 714 (1947).

Private property enjoys no constitutional privilege when it is knowingly used to traffic in drugs. *One 1982 Datsun 280ZX v. Bentley ex rel. North Little Rock Police Dep't*, 285 Ark. 121, 685 S.W.2d 498 (1985).

Drainage Ditches.

The owner of property damaged by the construction of drainage ditches is enti-

tled to compensation. *Sain v. Cypress Creek Drainage Dist.*, 161 Ark. 529, 257 S.W. 49 (1923).

Owners of land adjoining drainage ditch could not recover for damages to crops caused by poison used by drainage district to kill willows growing on the drainage ditch right-of-way which drifted through the air and came in contact with some of the crops being grown by plaintiffs since the crops were not damaged for public use. *Saint Francis Drainage Dist. v. Austin*, 227 Ark. 167, 296 S.W.2d 668 (1956).

Eminent Domain Proceedings.

The sole object of proceedings for the condemnation of land is to ascertain the compensation the company shall pay for the right of way. *Mountain Park Term. R.R. v. Field*, 76 Ark. 239, 88 S.W. 897 (1905); *Pine Bluff & W.R.R. v. Kelly*, 78 Ark. 83, 93 S.W. 562 (1906); *Saint Louis, I.M. & S. Ry. Co. v. Faisst*, 99 Ark. 61, 137 S.W. 815 (1911); *Sloan v. Lawrence County*, 134 Ark. 121, 203 S.W. 260 (1918).

The legislature may provide the procedure for the condemnation of private property for public use within constitutional bounds. *Helena v. Arkansas Utils. Co.*, 208 Ark. 442, 186 S.W.2d 783 (1945).

—Construction.

Statutes delegating the powers of eminent domain are to be strictly construed in favor of the landowner. *Nature Conservancy v. Kolb*, 313 Ark. 110, 853 S.W.2d 864 (1993).

—Dismissal.

A corporation's petition for condemning lands for public irrigation should not be dismissed for delay where the same cause was filed in 1944, dismissed in 1949, and refiled in 1950 unless the corporation is given opportunity to explain. *Southwestern Water Co. v. Merritt*, 224 Ark. 499, 275 S.W.2d 18 (1955).

—Mandamus.

The State Highway Commission cannot be compelled by mandamus to institute an eminent domain proceeding against the landowners, to the end that a forum may be provided for the recovery of damages. *Bryant v. Arkansas State Hwy. Comm'n*, 233 Ark. 41, 342 S.W.2d 415 (1961).

—Notice and Hearing.

The condemnation of land involves a jury trial only at the final assessment of

compensation, and where a court in vacation determines the amount of deposit to be made to guard the interests of a landowner, the landowner is entitled to notice. *Ex parte Reynolds*, 52 Ark. 330, 12 S.W. 570 (1889).

Where abutting property owners sought to enjoin state from widening highway right of way, burden was on the state to prove notice to the abutting owners rather than upon owners to show no notice of the unpublished condemnation order under which the state purported to be moving. *Arkansas State Hwy. Comm'n v. Anderson*, 234 Ark. 774, 354 S.W.2d 554 (1962).

—Parties.

Where land sold but not paid for was taken by a railroad company for right of way and subsequently the purchase money was paid and a deed executed to the purchaser's widow, the vendor is not a necessary party to a suit to recover damages for the right of way taken. *Brown v. Arkansas Cent. R.R.*, 72 Ark. 456, 81 S.W. 613 (1904).

Where funds are set aside to compensate the defendants in a compensation proceeding, property owners against whom no action has been taken will not be allowed to intervene to force the defendants to share with them the fund set aside. *Arkansas State Hwy. Comm'n v. Kincannon*, 193 Ark. 450, 100 S.W.2d 969 (1937).

—Statute of Limitations.

An action to recover damages from the digging of outlet ditches through one's land must be brought within three years of construction and exercise of eminent domain. *Sewer Imp. Dist. No. 1 v. Jones*, 199 Ark. 534, 134 S.W.2d 551 (1939).

A landowner has a limited time to file a claim for land condemned for public purposes under a lawful court order, and this limited time begins to run when the land is actually taken, that is, when an entry is made by the condemner. *Arkansas State Hwy. Comm'n v. Dobbs*, 232 Ark. 541, 340 S.W.2d 283 (1960).

Where the State Highway Commission admitted appropriating land under eminent domain procedure, and the real owner of the land could not be held responsible for failure of commission to name the correct owner of the title, failure of real owner to intervene until seven days

after an erroneously named owner received the money did not disentitle him to protection of the constitution for the value of the land, having been guilty of no laches, negligence, or delay. *Arkansas Real Estate Co. v. Arkansas State Hwy. Comm'n*, 237 Ark. 1, 371 S.W.2d 1 (1963).

Federal Constitution.

The provision in the United States Constitution that private property shall not be taken for public use without just compensation only applies to the exercise of the right of eminent domain by the United States. *Barron v. Mayor of Baltimore*, 32 U.S. (7 Pet.) 243, 8 L. Ed. 672 (1833); *Cairo & F.R.R. v. Turner*, 31 Ark. 494 (1876).

Fence Districts.

Statute which authorizes the annexation of lands in a city or town to a fence district is not unconstitutional as an appropriation of property without just compensation. *Reed v. Hundley*, 208 Ark. 924, 188 S.W.2d 117 (1945).

Fish and Game.

Regulation of the Game and Fish Commission providing that it shall be unlawful for any person to abandon or permit to go to waste the eatable portion of any game or fish in the state at any season of the year was invalid as an arbitrary taking of property without due process of law insofar as it related to fish farmers. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

Regulation of Game and Fish Commission prohibiting the sale of game fish was not in violation of this section even though applied to fish farmers who raised such game fish in their private waters. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

A partial fish kill as a conservation measure was held not to violate private property rights where the state owned the lake, used safe methods, and the public interest was only in fishing privileges. *Arkansas State Game & Fish Comm'n v. Eubank*, 256 Ark. 930, 512 S.W.2d 540 (1974).

Even though Ark. Const. Amend. 35 gives broad powers to the Fish and Game Commission, the Commission is subservient to, and bound by, this section. *Arkansas Game & Fish Comm'n v. Lindsey*, 299 Ark. 249, 771 S.W.2d 769 (1989).

Levee Districts.

A levee district is not liable for damage by water to lands lying between the levee and the river resulting from the water being raised higher than before the levee was constructed. *McCoy v. Board of Dirs.*, 95 Ark. 345, 129 S.W. 1097 (1910).

Levees.

A landowner is not entitled to damages for the failure to so construct a levee as to protect his land from the waters of the river. *City Oil Works v. Helena Imp. Dist. No. 1*, 149 Ark. 285, 232 S.W. 28 (1921).

Damage that may be awarded a landowner for the building of a levee is not necessarily limited to payment for land actually occupied by the levee, as any additional easement, use, or servitude required for the levee project and placed upon the land would amount to a damage or taking pro tanto for which the landowner must be compensated. *Garland Levee Dist. v. Hutt*, 207 Ark. 784, 183 S.W.2d 296 (1944).

Planning.

Mere plotting or planning in anticipation of an improvement does not constitute a taking or damaging of the property affected where the government has not imposed a restraint on the use of the property. *National By-Products, Inc. v. City of Little Rock ex rel. Little Rock Regional Airport Comm'n*, 323 Ark. 619, 916 S.W.2d 745 (1996).

Police Power.

An ordinance's prohibition against flashing or blinking signs fell within the area of police regulation and owners of existing signs had no vested right protected by this section. *City of Fayetteville v. S & H, Inc.*, 261 Ark. 148, 547 S.W.2d 94 (1977); *City of Fayetteville v. McIlroy Bank & Trust Co.*, 278 Ark. 500, 647 S.W.2d 439 (1983); *Hatfield v. City of Fayetteville*, 278 Ark. 544, 647 S.W.2d 450 (1983).

Subchapter 2-40-8, governing equine testing, is a valid exercise of police power. *Winters v. State*, 301 Ark. 127, 782 S.W.2d 566 (1990).

Pollution Control Regulations.

The lumber company did not show that compliance with the Water and Air Pollution Control Act would be commensurate to a taking of its property where there was

no proof of the company's net worth, nor anything to show a before and after value relative to the cost of compliance, and there was no proof that other options were open to the company. *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

The mere fact that a partial use of property is burdened by regulation does not amount to a taking. *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

Private Use.

Property can not be taken by eminent domain for private use. *Ozark Coal Co. v. Pennsylvania A.R.R.*, 97 Ark. 495, 134 S.W. 634 (1911).

Creating an improvement district to build a bridge for a railroad is taking property for a private use. *Nakdimen v. Fort Smith & Van Buren Bridge Dist.*, 115 Ark. 194, 172 S.W. 272 (1914).

Public Use.

The fact that private ends will be advanced by the condemnation of property will not defeat the right of condemnation if the use for which the property is desired is a public one. *Cloth v. Chicago, R.I. & Pac. R.R.*, 97 Ark. 86, 132 S.W. 1005 (1910).

Under the power of eminent domain, private property can be taken only for a public use, and whether or not the property taken is for a public use is a judicial question which the owner has the right to have determined by the courts. *Cloth v. Chicago, R.I. & Pac. R.R.*, 97 Ark. 86, 132 S.W. 1005 (1910).

It is a judicial question for the courts to determine whether a particular use for which private property is about to be taken under legislative sanction is a public one. *Ozark Coal Co. v. Pennsylvania A.R.R.*, 97 Ark. 495, 134 S.W. 634 (1911).

Although the principal object in constructing a certain railroad may be the development of the coal mine of a certain corporation, if the public has the right to use the railroad for shipping purposes, the railroad is a public highway and entitled to exercise the power of eminent domain. *Ozark Coal Co. v. Pennsylvania A.R.R.*, 97 Ark. 495, 134 S.W. 634 (1911).

Where the owner of land desires to

restrain the taking thereof for an unlawful use, he should file a plea in the condemnation suit setting out the facts entitling him to relief and ask for a transfer to equity. *Saint Louis, I.M. & S. Ry. v. B. Faisst & Co.*, 99 Ark. 61, 137 S.W. 815 (1911).

Everything which tends to enlarge the resources and promote the productive power of any considerable number of the inhabitants of a section of the state contributes either directly or indirectly to the general welfare and prosperity of the whole community. *Lee Wilson & Co. v. William R. Compton Bond & Mtg. Co.*, 103 Ark. 452, 146 S.W. 110 (1912).

The fact that a proposed canal for which a water district sought to acquire a right of way under eminent domain would at first serve only one user did not make such exercise of the right of eminent domain for private rather than public use where such water would be rendered available to many prospective users on the same terms. *Hale v. Southwest Ark. Water Dist.*, 244 Ark. 647, 427 S.W.2d 14 (1968).

Statute is not unconstitutional as allowing a taking for private use since a road established under this section is deemed a public road because anyone may use it; an individual who is landlocked and proceeds under this section has no other alternatives available to him and, if he were not granted access to his land under such a statute, he would have no remedy. *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (1983).

By failing to remedy the overflow of city sewage into plaintiff's home, the city effectively chose to purchase the property diminished by its actions; the public benefitted being not having to spend the money it would have taken to prevent the sewage overflow. *Robinson v. City of Ashdown*, 301 Ark. 226, 783 S.W.2d 53 (1990).

Public Welfare.

An individual's use and enjoyment of property is always subject to reasonable regulations in order to preserve the welfare of the public at large; therefore, regulations promulgated by the State Highway Commission pursuant to the Highway Beautification Act for the control of outdoor advertising devices along certain highways did not constitute an unlawful taking of property without compen-

sation. *Yarbrough v. Arkansas State Hwy. Comm'n*, 260 Ark. 161, 539 S.W.2d 419 (1976).

Railroads.

A statute punishing railroad employees for burning, mutilating, hauling off or burying stock killed by trains is constitutional. *Bannon v. State*, 49 Ark. 167, 4 S.W. 655 (1887).

The Railroad Commission (now Public Service Commission) has the power to establish a depot or station in the first place and to change the location of depots that have formerly been established. *Saint Louis, I.M. & S. Ry. Co. v. Bellamy*, 113 Ark. 384, 169 S.W. 322 (1914).

Redevelopment.

The Urban Development Law is not unconstitutional on the ground that it takes private property without just compensation. *Rowe v. Housing Auth.*, 220 Ark. 698, 249 S.W.2d 551 (1952).

An urban renewal plan does not violate this section and, if the agency cannot reach an agreement on price with landowners in project area, then procedures under eminent domain statutes must be invoked and land and property cannot be taken without just compensation. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

Riparian Rights.

The turning of sewage into a stream and polluting the waters thereof to the damage of lower riparian owners is a damage done for public use within the meaning of the Constitution, and the city must make compensation for such damage. *McLaughlin v. Hope*, 107 Ark. 442, 155 S.W. 910 (1913).

Damage to lower riparian owners by the turning of sewage into a stream should be assessed on a theory of a permanent taking under a right of eminent domain. *Jones v. Sewer Imp. Dist. No. 3*, 119 Ark. 166, 177 S.W. 888 (1915).

Taking of Property.

"Fault" has nothing to do with eminent domain, and it is not bare trespass or negligence which results in inverse condemnation but something which amounts to a de facto or common law "taking." *Robinson v. City of Ashdown*, 301 Ark. 226, 783 S.W.2d 53 (1990).

A taking does not require permanency

or an irrevocable injury. *City of Fayetteville v. Stanberry*, 305 Ark. 210, 807 S.W.2d 26 (1991).

The plaintiffs failed to show that there was a taking of their property by the defendant city where (1) shortly after the parties entered into negotiations for the sale of the property to the city, a fire occurred at the property, (2) there was a delay in responding to the report of the fire, (3) the building on the property was destroyed, and (4) the zoning board thereafter refused the plaintiffs' request for a building permit to rebuild or to rezone the property; the plaintiffs were not deprived of all beneficial enjoyment of their property, and there was no proof that the city received some public benefit. *Thompson v. City of Siloam Springs*, 333 Ark. 351, 969 S.W.2d 639 (1998).

The seizure of a gun was not a taking proscribed by the Constitution where the gun was evidence of a violation of the law. *Rainey v. Hartness*, 339 Ark. 293, 5 S.W.3d 410 (1999).

Tort Liability.

A drainage district's degree of liability in tort is not subject to the provisions of this section covering the taking of property without compensation. *Wood v. Drainage Dist. No. 2*, 110 Ark. 416, 161 S.W. 1057 (1913).

When a municipality acts in a manner which substantially diminishes the value of a landowner's land, and its actions are shown to be intentional, it cannot escape its constitutional obligation to compensate for a taking of property on the basis of its immunity from tort action. *Robinson v. City of Ashdown*, 301 Ark. 226, 783 S.W.2d 53 (1990).

Utility Rates.

Where the telephone company did not clearly show that the rate of return allowed upon its investment was confiscatory or that its income was so drastically affected that its credit was impaired, the commission's order did not violate this section. *Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm'n*, 267 Ark. 550, 593 S.W.2d 434 (1980).

Zoning.

When the owners refused to renew the lease on a game reserve, the commission promulgated special regulations called zoning laws which kept the appellants

from protecting their property from the wild game, which regulations constituted a taking of land without compensation. *Shellnut v. Arkansas State Game & Fish Comm'n*, 222 Ark. 25, 258 S.W.2d 570 (1953).

Where testimony shows commercial use of property is the only way it has reasonable and satisfactory value, refusal to rezone property for such use was arbitrary, unlawful, and discriminatory. *City of Little Rock v. Gardner*, 239 Ark. 54, 386 S.W.2d 923 (1965).

Where defendant had partially developed a five acre tract of land as a mobile home park prior to annexation by the city and the passage of a zoning ordinance making such use non-conforming, the spaces that had been at least partially developed gave the defendant vested rights in non-conforming use of the land and, as zoning ordinances must be strictly construed in favor of the property owner, attempts to deprive the owner of such a pre-existing use were regarded as unconstitutional as a taking of property without compensation or in violation of due process of law. *Blundell v. City of West Helena*, 258 Ark. 123, 522 S.W.2d 661 (1975).

Where the plaintiff property owners purchased the property knowing that it was zoned single family, the city's refusal to rezone the property to an apartment classification did not constitute a taking for public use without compensation and was not an unreasonable limitation placed upon the use of the property.

McMinn v. City of Little Rock, 275 Ark. 458, 631 S.W.2d 288 (1982).

A city's requirement that a property owner dedicate part of his property to the city as a condition for approval of his rezoning application constituted a taking of private property without just compensation since, although there was a nexus between the dedication and the city's interest in declining to rezone the property, the city failed to carry its burden of proving rough proportionality between the dedication and the impact of the proposed rezoning. *Beavers v. Arkansas Bd. of Dental Exm'rs*, 151 F.3d 838 (8th Cir. 1998).

Cited: *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955); *Arkansas State Highway Comm'n v. Bingham*, 231 Ark. 934, 333 S.W.2d 728 (1960); *Roesler v. Denton*, 239 Ark. 462, 390 S.W.2d 98 (1965); *American Television Co. v. City of Fayetteville*, 253 Ark. 760, 489 S.W.2d 754 (1973); *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974); *Arkansas State Hwy. Comm'n v. Wood*, 264 Ark. 425, 572 S.W.2d 583 (1978); *Hall v. Board of Trustees*, 671 F.2d 269 (8th Cir. 1982); *Arkansas State Hwy. Comm'n v. Security Sav. Ass'n*, 19 Ark. App. 133, 718 S.W.2d 456 (1986); *Tharp v. State*, 294 Ark. 615, 745 S.W.2d 612 (1988); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Mahurin v. Oaklawn Jockey Club*, 299 Ark. 13, 771 S.W.2d 19 (1989); *In re Switzer*, 303 Ark. 288, 796 S.W.2d 341 (1990).

§ 23. Eminent domain and taxation.

The State's ancient right of eminent domain and of taxation, is herein fully and expressly conceded; and the General Assembly may delegate the taxing power, with the necessary restriction, to the State's subordinate political and municipal corporations, to the extent of providing for their existence, maintenance and well being, but no further.

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain. 21 ALR 4th 765.

Airport operations or flight of aircraft as

constituting taking or damaging of property. 22 ALR 4th 863.

Measure and elements of damages or compensation for condemnation of public transportation system. 35 ALR 4th 1263.

Ark. L. Rev. Reimbursement of Attorney's Fees in Arkansas upon Dismissal of

Condemnation Proceedings, 22 Ark. L. Rev. 181.

Acquisition of Public Recreational Access to Privately Owned Property: Devices, Problems, and Incentives, 29 Ark. L. Rev. 514.

UALR L.J. Owen, Note: Local Govern-

ment — Municipal Corporation — Annexation Invalidation, 2 UALR L.J. 105.

McCorkle, Constitutional Law — Arkansas' Nondelegation Doctrine: The Arkansas Supreme Court Defines a Limit on the Delegation of Legislative Authority to a Private Party, 23 UALR L.J. 297.

CASE NOTES

ANALYSIS

In general.

Eminent domain.

Taxation.

—Annexation for taxation.

—Assessment of benefits.

—Classification for tax purposes.

—Delegation of power.

—State authority.

In General.

Because the property owner failed to perfect his appeal within 30 days under Ark. Inferior Ct. R. 9, the trial court did not have jurisdiction to hear the issues that arose out of the city's resolution to destroy his building; no due process violation occurred where the owner had an opportunity to be heard at a meaningful time and in a meaningful manner. *Ingram v. City of Pine Bluff*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 652 (Dec. 4, 2003).

Eminent Domain.

The legislature, acting for the state, may take any kind of property for public use by the exercise of eminent domain. *Cloth v. Chicago, R.I. & P. Ry. Co.*, 97 Ark. 86, 132 S.W. 1005 (1909).

The power of eminent domain is an attribute of sovereignty. The procedure for exercising the power is a matter of legislative regulation. *Cannon v. Felsenthal*, 180 Ark. 1075, 24 S.W.2d 856 (1930).

Ark. Const., Art. 12, § 9, does not suggest the right of eminent domain is limited to corporations; to read that section with such implied restrictions would be contrary to the court's interpretation of the general grant of eminent domain to the state in this constitutional provision. *Young v. Energy Transp. Sys.*, 278 Ark. 146, 644 S.W.2d 266 (1983).

The legislature may confer on an individual or a partnership the power to condemn private property for public purposes. *Young v. Energy Transp. Sys.*, 278 Ark. 146, 644 S.W.2d 266 (1983).

The General Assembly was within its province in authorizing the county court to exercise the power of eminent domain to give access to landlocked tracts, and clearly did so in § 27-66-401. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

Taxation.

Legislature has the power to make all property in the state subject to taxation, except property specifically exempted by the Constitution, and to provide where and in what manner taxes shall be levied and collected. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), appeal dismissed and cert. denied, 365 U.S. 770, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961).

Where the objects of the taxation are municipalities and counties which are entities created by the state, the legislature was acting well within its power when it imposed the tax. *County of Howard v. Rotenberry*, 286 Ark. 29, 688 S.W.2d 937 (1985).

The improper adoption of a tax by a county does not prohibit the subsequent imposition of the same or similar tax by the proper authority. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), overruled in part, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

—Annexation for Taxation.

The annexation of lands for purposes of taxation only is prohibited by the Constitution. *Saunders v. City of Little Rock*, 262 Ark. 256, 556 S.W.2d 874 (1977).

—Assessment of Benefits.

The act establishing a drainage district does not deprive the individual of his property, nor tax it for the benefit of other landowners, but only requires the payment of benefits assessed against the land resulting from the improvement for the common interest of all landowners of the

district. *Less Land Co. v. Fender*, 119 Ark. 20, 173 S.W. 407 (1915).

—**Classification for Tax Purposes.**

Legislature may classify corporations and corporate interests for purpose of taxation and specify the mode of assessment, levy, and collection of taxes on corporate properties and interests. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), appeal dismissed and cert. denied, 365 U.S. 770, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961).

—**Delegation of Power.**

The right to tax may be restricted by the Constitution but needs no clause to confer the right. *Ouachita County v. Rumph*, 43 Ark. 525 (1884).

The legislature may delegate the taxing power, with the necessary restrictions, on the state's subordinate political and municipal corporations to the extent of providing for their existence, maintenance, and well-being, but no further. *City of Little Rock v. Prather*, 46 Ark. 471 (1885); *Carson v. St. Francis Levee Dist.*, 59 Ark. 513, 27 S.W. 590 (1894); *Waldrop v. Kansas City S.R.R.*, 131 Ark. 453, 199 S.W. 369 (1917).

A local improvement district is not a subordinate political agency to which tax privileges may be delegated. *Whaley v. Northern Rd. Imp. Dist.*, 152 Ark. 573, 240 S.W. 1 (1922).

Where the assessments by the property owners' association on properties owned by its members arose out of contract and constituted a benefit to the property owners, such assessments did not amount to an unlawful delegation of the state's taxing power in violation of this section. *Kell v. Bella Vista Village Property Owners' Ass'n*, 258 Ark. 757, 528 S.W.2d 651 (1975).

Section 2-20-511 is an unconstitutional delegation of taxing authority. *Leathers v. Gulf Rice Ark., Inc.*, 338 Ark. 425, 994 S.W.2d 481 (1999).

—**State Authority.**

A state's power to impose a use tax is not conferred; it inheres in the sovereign and is plenary. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), overruled in part, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

The state's taxing authority is much broader than the limited authority delegated to the counties under §§ 26-74-201 et seq. and 26-74-301. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), overruled in part, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Cited: *City of Mt. Home v. Drake*, 281 Ark. 336, 663 S.W.2d 738 (1984); *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997); *Stilley v. Henson*, 342 Ark. 346, 28 S.W.3d 274 (2000).

§ 24. Religious liberty.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect, or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship, above any other.

Cross References. Atheists, Ark. Const, Art. 19, § 1.

RESEARCH REFERENCES

ALR. Validity, construction and effect of Sunday closing or blue laws. 10 ALR 4th 246.

Validity, under federal and state estab-

lishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays. 27 ALR 4th 1155.

Validity, under state constitution, of pri-

vate shopping center's prohibition or regulation of political, social, or religious expression or activity. 38 ALR 4th 1219.

Power of court or other public agency to order vaccination over parental religious objection. 94 ALR 5th 613.

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 431.

C.J.S. 16A C.J.S., Constitutional Law, § 513 et seq.

UALR L.J. Survey — Constitutional Law, 12 UALR L.J. 161.

Note, Constitutional Law — Free Exercise Clause — Sacrificial Rites Become Constitutional Rights on the Altar of Babalu Aye, 16 UALR L.J. 623.

CASE NOTES

ANALYSIS

In general.

Christian religion.

Commercial activities.

Incorporation.

Religious beliefs.

Sabbath breaking.

Schools.

In General.

There is a distinction between an infringement upon a religious belief, which is absolutely prohibited, and a limitation upon a religious action, which is subject to reasonable laws designed to protect the public health or welfare; those laws may limit the time, place, and manner of action. *Abram v. City of Fayetteville*, 281 Ark. 63, 661 S.W.2d 371 (1983).

Christian Religion.

The Christian religion is part of the common law, and its institutions may be protected by law. *Shover v. State*, 10 Ark. 259 (1850) (decision under prior Constitution).

Commercial Activities.

Religious organizations entering the commercial and secular world necessarily do so with the understanding that they no longer enjoy the constitutional protection afforded religious organizations. There are no shields once they cross the line that separates church and state; they are no longer considered a church or religious organization, because they are not acting like one. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45, cert. denied, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Incorporation.

Internal church disputes relating to the disclosure of church business should not be subject to the legal concerns of a court; however, when a church decides to incor-

porate, it submits itself to certain corporate laws of this state, and certain statutory duties apply unless they conflict with a constitutional prohibition. *Gipson v. Brown*, 288 Ark. 422, 706 S.W.2d 369 (1986).

Where members of a church, incorporated as a nonprofit corporation, sought disclosure of financial data and other business information relating to the church and asserted that, as members of a nonprofit corporation, they were entitled to this knowledge as a matter of statutory right and the church elders claimed first amendment protection since under church doctrine, the decision whether to disclose church financial information rested with the elders, an evidentiary hearing was necessary to determine the merits of the church elders' claim of constitutional protection against ordered disclosure of church information. *Gipson v. Brown*, 288 Ark. 422, 706 S.W.2d 369 (1986).

Religious Beliefs.

To claim the protection of the freedom of religion clauses of the U.S. and Arkansas Constitutions, a party's position must be rooted in religious belief; the determination of what is a "religious belief" is a delicate matter and state courts can only become involved in church disputes when "neutral principles" of law can be applied to resolve the dispute. *Gipson v. Brown*, 288 Ark. 422, 706 S.W.2d 369 (1986).

Sabbath Breaking.

The statute punishing the breaking of the Sabbath is not in derogation of the liberty of conscience secured by the declaration of rights. *Shover v. State*, 10 Ark. 259 (1850) (decision under prior Constitution).

The Sabbath statute is a civil regulation providing for a day of rest and imposes on no one any religious ceremony or form of worship. *Scales v. State*, 47 Ark. 476, 1 S.W. 769 (1886).

Schools.

This section does not prohibit the state from compelling children to attend school nor from appointing a guardian to have children vaccinated against smallpox in order to permit them to attend even though the parents contend that vaccination is contrary to their religious beliefs. *Cude v. State*, 237 Ark. 927, 377 S.W.2d 816 (1964).

The opening of a parochial school falls within the ambit of a religious action and is subject to reasonable limitation upon the time, place, and manner of operation; as a general rule, land use regulation by zoning may be a reasonable limitation upon the place of operation of a parochial school. *Abram v. City of Fayetteville*, 281 Ark. 63, 661 S.W.2d 371 (1983).

Where zoning ordinance clearly mani-

festated the city's legislative decision to use different criteria when considering an application for a conditional use permit for a church than when considering such a permit for a school, the ordinance was intended as a land use regulation, and the distinction between churches and schools was valid since a school is a more intensive use of land than a church. There is no constitutional prohibition against different requirements for different uses. *Abram v. City of Fayetteville*, 281 Ark. 63, 661 S.W.2d 371 (1983).

Cited: *Lendall v. Cook*, 432 F. Supp. 971 (E.D. Ark. 1977); *Windsor Park Baptist Church v. Arkansas Activities Ass'n*, 658 F.2d 618 (8th Cir. 1981); *Cortez v. Independence County*, 287 Ark. 279, 698 S.W.2d 291 (1985); *Gipson v. Brown*, 295 Ark. 371, 749 S.W.2d 297 (1988).

§ 25. Protection of religion.

Religion, morality and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Cross References. Atheists, Ark. Const., Art. 19, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

UALR L.J. Survey — Constitutional Law, 12 UALR L.J. 161.

CASE NOTES

Cited: *Gipson v. Brown*, 288 Ark. 422, 706 S.W.2d 369 (1986).

§ 26. Religious tests.

No religious test shall ever be required of any person as a qualification to vote or hold office; nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Cross References. Atheists, Ark. Const., Art. 19, § 1.

§ 27. Slavery — Standing armies — Military subordinate to civil power.

There shall be no slavery in this State, nor involuntary servitude, except as a punishment for crime. No standing army shall be kept in time of peace; the military shall, at all times, be in strict subordination to the civil power; and no soldier shall be quartered in any house, or on any premises, without the consent of the owner, in time of peace; nor in time of war, except in a manner prescribed by law.

§ 28. Tenure of lands.

All lands in this State are declared to be allodial; and feudal tenures of every description, with all their incidents, are prohibited.

RESEARCH REFERENCES

Ark. L. Rev. Medieval Law in the Age of Space: Some “Rules of Property” in Arkansas, 22 Ark. L. Rev. 248.

§ 29. Enumeration of rights of people not exclusive of other rights — Protection against encroachment.

This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

RESEARCH REFERENCES

UALR L.J. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 UALR L.J. 681.

CASE NOTES

ANALYSIS	
Abortion.	constitutionality of such a statute. May v. State, 254 Ark. 194, 492 S.W.2d 888, cert. denied, 414 U.S. 1024, 94 S. Ct. 448, 38 L. Ed. 2d 315 (1973).
Constitutional convention.	
Governmental immunity.	
Regulation of business.	
Right of privacy.	
Abortion.	Constitutional Convention.
A state may proscribe any abortion by a person who is not a physician, and a layman charged with inducing an abortion has no standing in court to attack the	Statute which provided for a limited constitutional convention not ratified by the electorate was unconstitutional under this section in that it would permit the delegates to such convention to exercise a power reserved to the electorate without a ratification by the electorate. Pryor v.

Lowe, 258 Ark. 188, 523 S.W.2d 199 (1975).

Governmental Immunity.

Statute which grants immunity from tort liability to subdivisions of the State are not unconstitutional as a violation of this section, which declares all laws contrary to the Constitution to be void. *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

Regulation of Business.

The state has the right to grant or withhold the privilege of the authority to sell liquor, and may impose any conditions it sees fit on such sale. *Wade v. Horner*, 115 Ark. 250, 170 S.W. 1005 (1914).

A statute fixing the price, wages, and hours of barbers violates the constitutional enumeration of the rights of the people. *Noble v. Davis*, 204 Ark. 156, 161 S.W.2d 189 (1942).

Right of Privacy.

Enforcement of statute establishing the

crime of sodomy and buggery did not violate any constitutional right of privacy where the act defendant was accused of was not committed in privacy but took place in an automobile on a public road adjacent to an interstate highway. *Connor v. State*, 253 Ark. 854, 490 S.W.2d 114 (1973), appeal dismissed, 414 U.S. 991, 94 S. Ct. 342, 38 L. Ed. 2d 230 (1973), rehearing denied, 414 U.S. 1138, 94 S. Ct. 884, 38 L. Ed. 2d 763 (1974).

The portion of an Arkansas statute criminalizing specific acts of private, consensual sexual intimacy between persons of the same sex is unconstitutional as it infringes upon an individual's fundamental right to privacy. *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002).

Cited: *Carroll v. Johnson*, 263 Ark. 280, 565 S.W.2d 10 (1978); *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995).

ARTICLE 3

FRANCHISE AND ELECTIONS

SECTION.

1. Qualifications of electors — Equal suffrage — Poll tax.
2. Right of suffrage.
3. [Repealed.]
4. Privilege of electors from arrest.
5. Idiots and insane persons.
6. Violation of election laws — Penalty.
7. Soldiers and sailors — Residence — Voting rights.

SECTION.

8. Time of holding elections.
9. Testimony in election contest — Self-incrimination.
10. Election officers.
11. Votes to be counted.
12. Elections by representative — Viva voce vote.

RESEARCH REFERENCES

Am. Jur. 25 *Am. Jur.* 2d, Elections, § 2 et seq.

C.J.S. 29 *C.J.S.*, Elections, § 1(1) et seq.

§ 1. Qualifications of electors — Equal suffrage — Poll tax.

Every citizen of the United States of the age of twenty-one years, who has resided in the State twelve months, in the county six months, and in the precinct, town or ward one month, next preceding any election at which they may propose to vote, except such persons as may for the

commission of some felony be deprived of the right to vote by law passed by the General Assembly, and who shall exhibit a poll tax receipt or other evidence that they have paid their poll tax at the time of collecting taxes next preceding such election, shall be allowed to vote at any election in the State of Arkansas, provided, that persons who make satisfactory proof that they have attained the age of twenty-one years since the time of assessing taxes next preceding said election and possess the other necessary qualifications, shall be permitted to vote; and, provided, further, that the said tax receipt shall be so marked by dated stamp or written endorsement by the judges of election to whom it may be first presented as to prevent the holder thereof from voting more than once at any election. It is declared to be the purpose of this amendment to deny the right of suffrage to aliens and it is declared to be the purpose of this amendment to confer suffrage equally upon both men and women, without regard to sex; provided, that women shall not be compelled to serve on juries. [As amended by Const. Amend. 8.]

Publisher's Notes. The provision of this section requiring that a poll tax receipt be presented prior to registration and voting was repealed by Ark. Const. Amend. 51, § 17.

Prior to amendment, this section read: "Every male citizen of the United States, or male person who has declared his in-

tention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the State twelve months, and in the county six months, and in the voting precinct or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people."

CASE NOTES

ANALYSIS

Jury service.

Residence.

Write-in candidates.

Jury Service.

Ark. Const., Amend. 8, granting equal suffrage, grants only the privilege of serving on a jury and does not compel women to serve on the jury or require jury commissioners to select women. *Bailey v. State*, 215 Ark. 53, 219 S.W.2d 424 (1949).

Residence.

One does not acquire a new residence until he has formed the intention of abandoning his old one. *Wilson v. Luck*, 201 Ark. 594, 146 S.W.2d 696 (1941).

The enrollee of the civilian conservation corps who had resided in the county for the required time, if a resident of the county when he enrolled or if he intended to remain when service in the camp was completed, was a resident within the meaning of the election law. *Wilson v. Luck*, 201 Ark. 594, 146 S.W.2d 696 (1941).

Where no misapprehension as to boundaries existed, ballots of persons not voting in the township in which they reside should be excluded. *Wilson v. Luck*, 203 Ark. 377, 156 S.W.2d 795 (1941).

In contest of election for party committeeman, evidence sustained finding of circuit court that two voters were not residents of county on date of the election. *Edwards v. Williams*, 234 Ark. 1113, 356 S.W.2d 629 (1962).

Where husband and wife moved to Pulaski County, buying a home in the county and assessing their personal taxes there, still owning their home in Greene County, paying their poll taxes there and intending to return to Greene County when the husband attained the age of retirement in four or five years, they are not qualified to vote in Greene County. *Harris v. Textor*, 235 Ark. 497, 361 S.W.2d 75 (1962).

A voter who lived with her parents in the county while husband was overseas, and who considered Arkansas her home, at least until her husband returned, met

the constitutional requirements of residence, although she moved from county only four days after election. *Pike County School Dist. No. 1 v. Pike County Bd. of Educ.*, 247 Ark. 9, 444 S.W.2d 72 (1969).

Persons who were temporarily residing outside the state, but continued to pay taxes on personalty in the county and voted by absentee ballot, could be considered as having maintained their residence in the state and county. *Pike County School Dist. No. 1 v. Pike County Bd. of Educ.*, 247 Ark. 9, 444 S.W.2d 72 (1969).

In resolving the asserted validity of voting residence, the two important features are the intent of the voter with respect to residency and the conduct of the voter, which must be reasonably consistent with the asserted residency. *Pike County School Dist. No. 1 v. Pike County Bd. of Educ.*, 247 Ark. 9, 444 S.W.2d 72 (1969).

Where the alderman had moved to California and voted there, even though he claimed he had never changed his residence from Arkansas, there was substantial evidence to support the judgment that

he was ineligible as alderman because he was not a qualified elector of the city. *Charisse v. Eldred*, 252 Ark. 101, 477 S.W.2d 480 (1972).

Durational residency requirements cannot be upheld except to the extent they are realistically related to reasonable registration requirements. *Meyers v. Jackson*, 390 F. Supp. 37 (E.D. Ark. 1975).

Write-in Candidates.

Statutory provision prohibiting voting for write-in candidates at city elections is constitutional. *Davidson v. Rhea*, 221 Ark. 885, 256 S.W.2d 744 (1953).

Cited: *Phillips v. Melton*, 222 Ark. 162, 257 S.W.2d 931 (1953); *Mobley v. Conway County Court*, 236 Ark. 163, 365 S.W.2d 122 (1963); *Faubus v. Miles*, 237 Ark. 957, 377 S.W.2d 601 (1964); *Maxwell v. Stephens*, 348 F.2d 325 (8th Cir.), *aff'd*, 348 F.2d 335 (8th Cir.), *cert. denied*, 382 U.S. 944, 86 S. Ct. 387, 15 L. Ed. 2d 353 (1965); *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968).

§ 2. Right of suffrage.

Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted, whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name; or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof.

Publisher's Notes. The clause prohibiting the registration of voters has been superseded by Ark. Const., Amend. 39.

CASE NOTES

ANALYSIS

Election statutes.
Registration.
Special elections.
Void elections.
Write-in candidates.

Election Statutes.

Election statutes are to be regarded as mandatory before, but not after, an election. *Henderson v. Gladish*, 198 Ark. 217, 128 S.W.2d 257 (1939).

Registration.

The legislature has power (by virtue of

Amendment 39) to make registration a prerequisite to voting in any election. *Faubus v. Miles*, 237 Ark. 957, 377 S.W.2d 601 (1964).

Special Elections.

Where the Board of Election Commissioners had no power or authority to call or hold a new election, the court could not use a writ of mandamus to direct it to do so since that would confer on the board a power that did not exist, and it is the function of the legislature, not the courts, to create rights of action or provide relief where means of redress have not been

designated. *Files v. Hill*, 268 Ark. 106, 594 S.W.2d 836 (1980).

Void Elections.

Trial court properly held that, where an election for Justice of the Peace provided 183 voters with ballots omitting a selection space for the Justice of the Peace race, the outcome of the election at issue was rendered uncertain and required that the election be voided. *Whitley v. Cranford*, — Ark. —, 119 S.W.3d 28, 2003 Ark. LEXIS 480 (2003).

§ 3. [Repealed.]

Publisher's Notes. This section, concerning the manner of conducting elections, was repealed and replaced by Const. Amend. 50. Const. Amend. 81 later repealed section 3 of Amend. 50.

Write-in Candidates.

Statutory provision prohibiting voting for write-in candidates at city elections is constitutional. *Davidson v. Rhea*, 221 Ark. 885, 256 S.W.2d 744 (1953).

Cited: *Swanberg v. Tart*, 300 Ark. 304, 778 S.W.2d 931 (1989); *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

Cross References. Elections by ballot or voting machine, Ark. Const., Amend. 50.

Protection of secrecy of votes, Ark. Const., Amend. 81.

§ 4. Privilege of electors from arrest.

Electors shall, in all cases (except treason, felony and breach of the peace,) be privileged from arrest during their attendance at elections, and going to and from the same.

§ 5. Idiots and insane persons.

No idiot or insane person shall be entitled to the privileges of an elector.

CASE NOTES

Cited: *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

§ 6. Violation of election laws — Penalty.

Any persons who shall be convicted of fraud, bribery, or other willful and corrupt violation of any election law of this State, shall be adjudged guilty of a felony, and disqualified from holding any office of trust or profit in this State.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

Wills, Constitutional Crisis: Can the Governor (or Other State Officeholder) Be Removed from Office in a Court Action after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

CASE NOTES

Forfeiture of Office.

When the question is presented, it may be found that the power is implied for the legislature to provide for a method ascertaining and declaring the forfeiture of

office. *Speer v. Wood*, 128 Ark. 183, 193 S.W. 785 (1917).

Cited: *Campbell v. State*, 300 Ark. 570, 781 S.W.2d 14 (1989).

§ 7. Soldiers and sailors — Residence — Voting rights.

No soldier, sailor, or marine, in the military or naval service of the United States, shall acquire a residence by reason of being stationed on duty in this State.

CASE NOTES

ANALYSIS

Divorce.
Intent.

Divorce.

A soldier of the United States must meet the residency requirements of the state, apart from his military service, for two months before filing divorce suit in the state. *Kennedy v. Kennedy*, 205 Ark. 650, 169 S.W.2d 876 (1943).

A soldier may not acquire residence in the state from mere fact of being stationed in the state, but must have residence for two months before filing suit for divorce apart from that service. *Mohr v. Mohr*, 206 Ark. 1094, 178 S.W.2d 502 (1944).

Evidence was sufficient to show that soldier, who had resided in state for three months before divorce suit was filed, intended to make his residence in Arkansas; thus, he was an Arkansas resident and entitled to bring suit for divorce. *Walther v. Walther*, 233 Ark. 155, 343 S.W.2d 408 (1961).

Intent.

Although a soldier does not become a resident by reason of being stationed in the state, he may acquire such residence by residing in the state for three months with animus manendi. *Mohr v. Mohr*, 206 Ark. 1094, 178 S.W.2d 502 (1944).

§ 8. Time of holding elections.

The general elections shall be held biennially, on the first Monday of September; but the General Assembly may, by law, fix a different time.

Cross References. Time of general election, § 7-5-102.

CASE NOTES

ANALYSIS

Postponement.
Readjustment of terms.

Postponement.

The act changing the time of election from September to November will not be construed as requiring the election of suc-

cessors for men elected for an additional two years, but rather to postpone the commencement of terms of office of the men later elected. *Hendricks v. Hodges*, 122 Ark. 82, 182 S.W. 538 (1916).

The legislature was empowered to change the time of the general election, resulting in the postponement of the time

of appointment of a county examiner. *Barnett v. Sutterfield*, 129 Ark. 461, 196 S.W. 470 (1917).

just the commencement of official terms within reasonable limits. *Hutcheson v. Pitts*, 170 Ark. 248, 278 S.W. 639 (1926).

Cited: *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959).

Readjustment of Terms.

The legislature has the power to read-

§ 9. Testimony in election contest — Self-incrimination.

In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy: but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony.

RESEARCH REFERENCES

Ark. L. Rev. Theory of Testimonial Competency and Privilege, 4 Ark. L. Rev. 377.

§ 10. Election officers.

No person shall be qualified to serve as an election officer, who shall hold, at the time of the election, any office, appointment, or employment in or under the government of the United States, or of this State, or in any city or county or any municipal board, commission or trust in any city, save only the justices of the peace, and aldermen, notaries public and persons in the militia service of the State. Nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve — save only to such subordinate municipal or local offices, below the grade of city or county officers, as shall be designated by general law.

CASE NOTES

ANALYSIS

- Applicability.
- Constitutional officers.
- Justice of peace.
- School election.
- Strict compliance.

Applicability.

The provision applies to all civil offices without respect to rank or grade until the legislature designates subordinate municipal or local offices as exempt. *Faulkner v. Woodard*, 203 Ark. 254, 156 S.W.2d 243 (1941).

Constitutional Officers.

Election officers are recognized by the

Constitution as constitutional officers. *Henderson v. Gladish*, 198 Ark. 217, 128 S.W.2d 257 (1939).

Justice of Peace.

An incumbent justice of the peace may contest the eligibility of his successor to hold the office, where the successor had acted as a judge of the election, and may continue in office until a successor is qualified. *Faulkner v. Woodard*, 203 Ark. 254, 156 S.W.2d 243 (1941).

School Election.

A statute providing that school directors shall serve as judges of school election or designate such judges does not manifest

the legislative intent that the office was exempted from the provision of the Constitution. *State ex rel. Robinson v. Jones*, 194 Ark. 445, 108 S.W.2d 901 (1937).

Strict Compliance.

There should be strict and literal compliance with the provisions of this section and no exemptions should be made unless

made so by the legislature in clear and unmistakable terms. *State ex rel. Robinson v. Jones*, 194 Ark. 445, 108 S.W.2d 901 (1937).

Cited: *Morgan v. Neuse*, 314 Ark. 4, 857 S.W.2d 826 (1993); *Saunders v. Neuse*, 320 Ark. 547, 898 S.W.2d 43 (1995).

§ 11. Votes to be counted.

If the officers of any election shall unlawfully refuse or fail to receive, count, or return the vote or ballot of any qualified elector, such vote or ballot shall nevertheless be counted upon the trial of any contests arising out of said election.

CASE NOTES

ANALYSIS

In general.

Election at improper time.

Primary election.

Regulations for casting ballots.

Votes for ineligible candidate.

In General.

All legal votes cast at an election must be counted, whether returned or not, or whether any irregularities attended the election. *Govan v. Jackson*, 32 Ark. 553 (1877).

Election at Improper Time.

Where an election is not held at the proper time, the court may not declare what would have been the voter's choice in case an election had been held. *Chism v. Tucker*, 101 Ark. 112, 141 S.W. 503 (1911).

Primary Election.

Although the constitutional provisions in regards to elections do not apply to

primary elections, the legislature so provides in requiring that primary elections be conducted in conformity with the general election laws of the state. *Craig v. Sims*, 160 Ark. 269, 255 S.W. 1 (1923).

Regulations for Casting Ballots.

This provision, by reference to unlawful refusal or failure to count a particular vote, plainly contemplates that laws may be enacted to regulate the casting of ballots, and statute forbidding the counting of write-in votes where timely notice of candidacy is not given does not violate this section. *Byrd v. Short*, 228 Ark. 369, 307 S.W.2d 871 (1957).

Votes for Ineligible Candidate.

Votes cast for an ineligible candidate will not entitle him who receives the next highest number of votes to the office. *State ex rel. Robinson v. Jones*, 194 Ark. 445, 108 S.W.2d 901 (1937).

Cited: *Henderson v. Gladish*, 198 Ark. 217, 128 S.W.2d 257 (1939).

§ 12. Elections by representative — Viva voce vote.

All elections by persons acting in a representative capacity shall be viva voce.

Cross References. Election of officers by General Assembly, Ark. Const., Art. 5, § 14.

ARTICLE 4

DEPARTMENTS

SECTION.

- 1. Departments of government.
- 2. Separation of departments.

RESEARCH REFERENCES

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 246 et seq.	C.J.S. 16 C.J.S., Constitutional Law, § 111 et seq.
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§ 1. Departments of government.

The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to-wit: Those which are legislative, to one, those which are executive, to another, and those which are judicial, to another.

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — Separation of Powers — Legislative Delegation of Judicial Powers, 10 Ark. L. Rev. 213.	Note, Spradlin v. Arkansas Ethics Commission: A Hard-Line Approach to Separation of Powers, 48 Ark. L. Rev. 755.
The Executive Branch — Fusing the Division of Authority, 24 Ark. L. Rev. 182.	UALR L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.
Gingerich, Mandamus of Unexecuted Executive Discretionary Powers, 33 Ark. L. Rev. 765.	Survey — Constitutional Law, 10 UALR L.J. 129.
Powers, Separation of Powers: The Unconstitutionality of the Arkansas Legislative Council, 36 Ark. L. Rev. 124.	Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

CASE NOTES

ANALYSIS

Delegation of powers.
Jury powers.

Delegation of Powers.

The General Assembly has from time to time created a board or commission empowered to carry out a regulatory function and has authorized the Governor to execute the function of appointing board members without senate approval, and this is appropriate where the constitution is silent on which branch of government should make the appointments. Clinton v.

Clinton, 305 Ark. 585, 810 S.W.2d 923 (1991).

Even though the Public Service Commission is created by the General Assembly and performs legislative functions, the General Assembly may still delegate the right to appoint commissioners to the Governor. Clinton v. Clinton, 305 Ark. 585, 810 S.W.2d 923 (1991).

Empowering the Governor to appoint special Public Service Commission commissioners, without senate approval, is a valid delegation of authority by the legislature to the branch of government that is

equipped to execute and implement legislative mandates; therefore, § 23-2-102(a) passes constitutional muster. *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

The judicial branch cannot take away the discretion to make a decision which is reposed in the executive branch. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

The absence of language in § 14-94-127, directing the chancery court to use a particular method for computing the tax levy, bestows upon the judiciary a nondelegable power of the legislature in violation of the separation of powers provisions of the Arkansas Constitution. *Robert D. Holloway, Inc. v. Pine Ridge Addition Residential Property Owners*, 332 Ark. 450, 966 S.W.2d 241 (1998).

Where defendant pointed to no rules of civil procedure which would conflict with the presumption of being uninsured created in § 27-19-503 of the Motor Vehicle Safety Responsibility Act by the Arkansas General Assembly, the section is not unconstitutional based on any separation of powers concerns. *Throesch v. United States Fid. & Guar. Co.*, 100 F. Supp. 2d 934 (E.D. Ark. 2000).

Section 23-52-104(b) was an invalid attempt to evade the usury provisions of Ark. Const., Art. 19, § 13 and, further, such an attempt violated the constitutional mandate requiring separation of powers set forth in this Article. *Luebbers v. Money Store, Inc.*, 344 Ark. 232, 40 S.W.3d 745 (2001).

Circuit court lacked jurisdiction to enjoin the casting of a vote by the legislator notwithstanding that, under *Matthews v. Bailey*, 198 Ark. 830, 131 S.W.2d (1939), such a vote, if both decisive and defective, might have affected the validity of a contested enactment; pursuant to Ark. Const.

Art. 5, § 11, the issue of whether the legislator was required to reside in the district from where he was elected was a matter to be determined by the Arkansas House of Representatives. *Magnus v. Carr*, 350 Ark. 388, 86 S.W.3d 867 (2002).

The system of funding the public school system in place between 1994 and 2000 violated the provisions of Ark. Const. Art. 14, § 1 and Art. 2, §§ 2, 3, and 18, but it was the responsibility of the General Assembly and not the judiciary system to create a system that complied with those constitutional requirements. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

Jury Powers.

The fact that a jury may take into consideration when a person convicted of a certain class of felony is eligible for parole or transfer, § 16-7-103, is in no way a usurpation of the executive department's power and authority to decide when an individual defendant should be released, and does not violate Ark. Const., Art. 4. *Teague v. State*, 328 Ark. 724, 946 S.W.2d 670 (1997).

Cited: *Ball v. Roberts*, 291 Ark. 84, 722 S.W.2d 829 (1987); *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988); *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (1989); *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990); *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990); *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993); *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 916 S.W.2d 95 (1996); *Griffen v. Ark. Judicial Discipline & Disability Comm'n*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 634 (Nov. 20, 2003).

§ 2. Separation of departments.

No person or collection of persons, being of one of these departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — Separation of Powers — Legislative Dele-

gation of Judicial Powers, 10 Ark. L. Rev. 213.

Powers, Separation of Powers: The Unconstitutionality of the Arkansas Legislative Council, 36 Ark. L. Rev. 124.

Note, Spradlin v. Arkansas Ethics Commission: A Hard-Line Approach to Separation of Powers, 48 Ark. L. Rev. 755.

UALR L.J. Jans, Survey of Constitutional Law, 3 UALR L.J. 184.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distin-

guishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

Survey — Constitutional Law, 10 UALR L.J. 129.

Wolfram, Lawyer Turf and Lawyer Regulation — The Role of the Inherent-Powers Doctrine, 12 UALR L.J. 1.

Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

CASE NOTES

ANALYSIS

In general.

Concurrent offices.

—Chief of police and sheriff.

—County judge and town recorder.

—Justice of peace and sheriff.

—Pardon and parole board member and legislator.

—Prosecuting attorney and legislator.

—State board or commission member and legislator.

—State college board member and legislator.

Delegation of powers.

—Improper.

—Domestic relations.

—Guidelines missing.

—Proper.

—Employment Security Division Act.

—General Accounting Procedures Law.

—Justice Building Act.

—Revenue Department Building Act.

—Revenue Stabilization Act.

Executive power.

Judicial power.

—Attorneys for indigents.

—Constitutional convention.

—Court personnel.

—Prohibited acts.

Legislative power.

—Prohibited acts.

—Validity of acts.

In General.

Neither of the three separate departments of government is subordinate to the other and neither can arrogate to itself any control over either one of the others in matters which have been confided by the constitution to such other department; the Legislature, under the separation of powers, can neither be coerced nor controlled by judicial power such as a writ of mandamus. Wells v. Purcell, 267 Ark. 456, 592 S.W.2d 100 (1979).

Amendment 60, which permits maximum interest rates at 5% above the federal discount rate, did not violate the constitutional requirements of separation of powers. W.E. Tucker Oil Co. v. Portland Bank, 285 Ark. 453, 688 S.W.2d 293 (1985).

According to the separation of powers doctrine, one department cannot interfere with, or encroach on, or exercise the powers of either of the other departments. Ball v. Roberts, 291 Ark. 84, 722 S.W.2d 829 (1987).

For each branch to operate as constitutionally envisioned, one branch must not be subordinated to either or both of the other branches, and one branch must not take control of one or both of the other branches. City of Lowell v. M & N Mobile Home Park, 323 Ark. 332, 916 S.W.2d 95 (1996).

Concurrent Offices.

The office of state treasurer, as well as those of secretary of state, auditor, sheriff, coroner, constable and militia officers, are executive; the office of justice of the peace is judicial, and no person can at the same time hold the offices of treasurer and justice of the peace. A person holding one office has a right, if elected to another which he cannot hold at the same time, to accept it, but in so doing he vacates, eo instanti, the first office. State v. Hutt, 2 Ark. 282 (1840).

—Chief of Police and Sheriff.

The offices of chief of police and sheriff are not incompatible so as to make the acceptance of one a resignation of the other. Peterson v. Culpepper, 72 Ark. 230, 79 S.W. 783 (1904).

—County Judge and Town Recorder.

A person may hold the office of town recorder and county judge at the same

time. *State ex rel. Murphy v. Townsend*, 72 Ark. 180, 79 S.W. 782 (1904).

—**Justice of Peace and Sheriff.**

A person can not hold the offices of justice of the peace and deputy sheriff at the same time. The acceptance of the latter vacates the former. *State Bank v. Curran*, 10 Ark. 142 (1849).

—**Pardon and Parole Board Member and Legislator.**

This section clearly precludes a member of the General Assembly from serving as a member of the state board of pardons and paroles during the term he has been elected to serve as a member of the General Assembly. *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963).

—**Prosecuting Attorney and Legislator.**

Where circuit judge appointed a special prosecuting attorney who was a member of the General Assembly, and defendant asserted that as a member of the general assembly such special prosecutor was prohibited from serving because of this section, he was a de facto officer and defendant could not question his authority to act as such. *Owen v. State*, 263 Ark. 493, 565 S.W.2d 607 (1978).

—**State Board or Commission Member and Legislator.**

A senator violates the separation of powers doctrine when he serves on the Board of Workforce Education and/or the Capitol Arts and Grounds Commission. *State Bd. of Workforce Educ. v. King*, 336 Ark. 409, 985 S.W.2d 731 (1999).

—**State College Board Member and Legislator.**

This section clearly precludes a member of the General Assembly from serving as a member of the board of a state supported college during the term he has been elected to serve as a member of the General Assembly. *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963).

Delegation of Powers.

Certain duties not essentially judicial may be imposed upon judges in those cases where, by the Constitution, such duties do not inhere in another department of the government, but authority set aside to the executive department cannot be delegated to judges. *Oates v. Rogers*, 201 Ark. 335, 144 S.W.2d 457 (1940).

The legislature has no right to delegate the lawmaking power to commissions and boards established by the legislature, but may delegate the power to determine facts upon which the law makes or intends to make its action depend, and general provisions may be set forth with power given to those who are to act under such general provisions to complete the details. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

The power to designate certain ambulances and other vehicles as emergency vehicles cannot be delegated to the chiefs of police of cities without setting up adequate standards and guide lines to govern their discretion in such designations. *Walden v. Hart*, 243 Ark. 650, 420 S.W.2d 868 (1967).

The enactment of zoning ordinances is a legislative function subject only to appellate review to determine whether the city legislative body acted arbitrarily or capriciously and the separation of powers provision does not permit the legislature to empower the judiciary to review the wisdom of ordinances enacted by virtue of the legislature's delegation of power to the city legislative body. *Wenderoth v. City of Ft. Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971). But see *Camden Community Dev. Corp. v. Sutton*, 339 Ark. 368, 5 S.W.3d 439 (1999).

While the General Assembly may not delegate its legislative authority, it may, by providing guidelines, delegate the power to determine certain facts, or the happening of a certain contingency, on which the operation of the statute is by its terms made to depend. *Venhaus v. State ex rel. Lofton*, 285 Ark. 23, 684 S.W.2d 252 (1985).

Even though the Public Service Commission is created by the General Assembly and performs legislative functions, the General Assembly may still delegate the right to appoint commissioners to the Governor. *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

Empowering the Governor to appoint special Public Service Commission commissioners, without senate approval, is a valid delegation of authority by the legislature to the branch of government that is equipped to execute and implement legislative mandates, therefore, § 23-2-102(a) passes constitutional muster. *Clinton v.*

Clinton, 305 Ark. 585, 810 S.W.2d 923 (1991).

—Improper.

Statute delegating to circuit and chancery judges appointment of county collector was held unconstitutional. *Oates v. Rogers*, 201 Ark. 335, 144 S.W.2d 457 (1940).

Statute which provided for compulsory continuance of cases where member of legislature was attorney in case, regardless of when such legislative member became associated with the case, were unconstitutional as depriving the courts of power to determine a judicial question. *McConnell v. State*, 227 Ark. 988, 302 S.W.2d 805 (1957).

In view of the separation of powers provision contained herein, it would not appear that the legislature could validly confer administrative powers on the circuit courts. *Parham v. Dove*, 271 F.2d 132 (8th Cir. 1959); *Dove v. Parham*, 181 F. Supp. 504 (E.D. Ark. 1960), *aff'd*, 282 F.2d 256 (8th Cir. 1960).

Statute is an unconstitutional delegation of power to a federal agency expressly reserved to our legislature by this article. *Cheney v. St. Louis S.W. Ry.*, 239 Ark. 870, 394 S.W.2d 731 (1965).

It was not constitutionally permissible for statute to empower the judiciary to take away the discretionary powers vested by the legislature in the city's legislative body to enact zoning and rezoning ordinances. *Wenderoth v. City of Ft. Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971). But see *Camden Community Dev. Corp. v. Sutton*, 339 Ark. 368, 5 S.W.3d 439 (1999).

Statute authorizing the circuit court to set salaries for public defenders and a judicial order directing the county to pay such money were unconstitutional violations of separation of powers since setting of salaries and payment of expenses is a legislative function. *Pulaski County ex rel. Mears v. Adkisson*, 262 Ark. 636, 560 S.W.2d 222 (1978).

By designating the Chief Justice of the Supreme Court to appoint one of the members of a commission, the portion of *Init. Meas.* 1990, No. 1, creating the commission, codified as § 7-6-217, violates the separation powers and is unconstitutional. *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993).

—Domestic Relations.

This section prevents the courts from declaring, without express statutory authority, a right of action in a divorced husband, for the benefit of a child of the marriage, for the alienation of affections of the child and wife from the husband, or the loss by the child of the security of a home life against the alienator. *Lucas v. Bishop*, 224 Ark. 353, 273 S.W.2d 397 (1954).

—Guidelines Missing.

Statute providing for minimum prevailing wages to be paid on certain state, county, municipal or other taxing agency public construction projects according to wages determined by the secretary of labor of the United States for corresponding classes of laborers and mechanics on projects of similar character in the area where the work is to be performed is unconstitutional in that it fails to establish a standard or formula by which a wage scale may be formulated. *Crowly v. Thornbrough*, 226 Ark. 768, 294 S.W.2d 62 (1956).

Where the application of a law depends on the uncontrolled discretion of a county judge, it is an unconstitutional delegation of power. *Bennett v. NAACP*, 236 Ark. 750, 370 S.W.2d 79 (1963).

—Proper.

The duties of a county judge are primarily ministerial and the legislature has the right to add new ministerial duties. *Oates v. Rogers*, 201 Ark. 335, 144 S.W.2d 457 (1940).

Act authorizing appointment of delinquent personal tax collector by board composed of county judge, mayors of county seats, and chief county school officer, was held not violative of this provision. *Newton v. Edwards*, 203 Ark. 18, 155 S.W.2d 591 (1941).

Legislature's delegation of power to prescribe rules of criminal procedure is not unconstitutional nor outside the enabling act, provided the rule in question is truly procedural. *Miller v. State*, 262 Ark. 223, 555 S.W.2d 563 (1977).

Statute which limited loans to students who qualified under federal educational standards was not an unconstitutional delegation of legislative power to the federal government since there was no requirement of any action by any federal

officer or agency. *Turner v. Woodruff*, 286 Ark. 66, 689 S.W.2d 527 (1985).

Administrative agencies may possess a combination of powers from the coordinate branches of government without violating the separation of powers principle. *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

—Employment Security Division Act.

Act creating the Employment Security Division in the Department of Labor and charging such administrative agency with enforcement of provisions of the act was held not violative of this constitutional provision. *Hickenbottom v. McCain*, 207 Ark. 485, 181 S.W.2d 226, cert. denied, 323 U.S. 777, 65 S. Ct. 189, 89 L. Ed. 621 (1944).

—General Accounting Procedures Law.

The General Accounting Procedures Law does not authorize the withdrawal of any money from the state treasury and it is not an appropriation act and is not unconstitutional as an unauthorized delegation of legislative powers. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

—Justice Building Act.

The Arkansas Justice Building Act contained no unlawful delegation of legislative power. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

—Revenue Department Building Act.

The act providing for a State Revenue Department Building does not unconstitutionally delegate legislative powers to the Building Commission as it empowers the commission to perform only such ministerial acts as are required to effectuate the overall purpose of the legislature. *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962).

—Revenue Stabilization Act.

The Revenue Stabilization Act does not delegate powers contrary to this article of the Constitution. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

Executive Power.

The auditor can not exercise any judicial functions. *Auditor v. Davies*, 2 Ark. 494 (1840); *Danley v. Whiteley*, 14 Ark. 687 (1854).

Judicial Power.

The holding in *Sturdivant v. City of Farmington*, 255 Ark. 415, 500 S.W.2d 769 (1973), which made school districts self-insurers when they did not carry insurance, is not unconstitutional as a violation of the separation of powers doctrine of this section. *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

The constitutional propriety of de novo review primarily turns upon the character and legal status of the affected interests. If the interests are constitutionally or statutorily preserved, or preserved by private agreement, de novo review is appropriate; however, if the interests are less than fixed and their existence primarily depends on executive or legislative wisdom, de novo review is inappropriate. *Arkansas Comm'n on Pollution Control & Ecology v. Land Developers, Inc.*, 284 Ark. 179, 680 S.W.2d 909 (1984).

The separation of powers doctrine was not violated by allowing the county court to exercise jurisdiction over roads within the city. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

Boards, commissions and agencies, which have the authority to issue advisory opinions and guidelines, investigate alleged violations and render findings and disciplinary action thereon, subpoena persons and documents, administer oaths, conduct hearings and take sworn testimony, hire a staff and legal counsel and approve forms prepared by the Secretary of State, are not by these powers rendered judicial in nature nor a part of the judicial department of government. *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993).

While at times there may be difficulty in discerning whether particular boards, commissions, or other agencies are a part of the legislative department or the executive department — or perhaps belong to some de facto fourth department of government — there can be no doubt that they are not a part of the judicial department. *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993).

—Attorneys for Indigents.

Section 16-92-108 (repealed) violates the separation of powers provisions contained in this section, for the right to decide whether an attorney, who regularly

practices before a court, can be appointed to represent an indigent in a criminal case is a judicial question, not a legislative one, and so the legislature invaded the province of the judicial branch of government in declaring certain attorneys could not be appointed as counsel in a criminal case. *Ball v. Roberts*, 291 Ark. 84, 722 S.W.2d 829 (1987).

—Constitutional Convention.

The courts ought not to interfere, so long as a constitutional convention is acting within the scope of its duties in framing a constitution, no matter how much the convention appears to exceed its powers; but courts should interfere in matters outside the convention's proper functions to stop an ultra vires act as readily as they would stop such an act by any other department of government. *Riviere v. Wells*, 270 Ark. 206, 604 S.W.2d 560 (1980).

—Court Personnel.

Judges do not have the authority to set salaries of court personnel, unless that authority has been properly delegated to them by the legislative branch. *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

—Prohibited Acts.

Courts cannot annul laws because they may seem unwise. *Cruce v. Hill*, 156 Ark. 224, 245 S.W. 485 (1922).

Construing statute as giving the Supreme Court the power to reduce a sentence that is within statutory limits and where no error has been shown is unconstitutional. *Abbott v. State*, 256 Ark. 558, 508 S.W.2d 733 (1974).

Adjourning and extending a legislative session are clearly among the powers of the General Assembly; once it has exercised its powers, even if they have been exercised erroneously, it is clear that a circuit court has no power, without violating this section and extending the scope of the writ of mandamus, to issue the writ to that body. *Wells v. Purcell*, 267 Ark. 456, 592 S.W.2d 100 (1979).

Mandamus cannot be used to undo legislative action or to compel revocation or rescission of legislative action in violation of the doctrine of separation of powers. *Wells v. Purcell*, 267 Ark. 456, 592 S.W.2d 100 (1979).

The trial court, in a case involving the cancellation by the highway commission

of permits for outdoor advertising signs allegedly issued based upon applicant's misrepresentations, improperly ordered the permits reissued since the order substituted the judgment of the circuit court for the commission contrary to this section. *Arkansas State Hwy. Comm'n v. White Adv. Int'l*, 273 Ark. 364, 620 S.W.2d 280 (1981).

It is not constitutionally appropriate for a court to determine the substantive merits of the city's refusal to rezone; the fundamental concept of zoning legislation is sound city planning. *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 916 S.W.2d 95 (1996).

Section 23-52-104(b) was an invalid attempt to determine the usury provisions of Ark. Const., Art. 19, § 13 and, further, such an attempt violated the constitutional mandate requiring separation of powers set forth in this Article. *Luebbers v. Money Store, Inc.*, 344 Ark. 232, 40 S.W.3d 745 (2001).

Legislative Power.

It is within the power of the legislature to confer upon circuit courts the power to examine, approve, or reject the official bond of a tax collector. *Oliver v. Martin*, 36 Ark. 134 (1880).

It is within the power of the legislature to fix a maximum amount to be used for any given proposal with a proviso that the money will not be so used unless needed. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

County quorum court ordinance which required all county constitutional offices to be open to serve the public from 8:00 a.m. to 4:30 p.m. related to the performance of defendant in providing necessary services as a tax collector and, as such, was within the express powers granted the quorum court and not in violation of the separation of powers provisions. *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978).

Statute which limits the maximum amount of fees paid to attorneys appointed to represent criminal indigents is constitutional and a trial court is bound by the provisions of that section; since there is no common law or statutory or constitutional authority establishing the payment of attorney's fees, the question of what constitutes adequate compensation must be left to the sound discretion of the

General Assembly. *State v. Ruiz*, 269 Ark. 331, 602 S.W.2d 625 (1980).

The system of funding the public school system in place between 1994 and 2000 violated the provisions of Ark. Const. Art. 14, § 1 and Art. 2, §§ 2, 3, and 18, but it was the responsibility of the General Assembly, and not the judiciary system, to create a system that complied with those constitutional requirements. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

—Prohibited Acts.

The legislature can not continue causes pending in the courts nor authorize the courts to set aside judgments. *Byrd v. Brown*, 5 Ark. 709 (1844); *McLain v. Irwin*, 6 Ark. 71 (1845); *Biscoe v. Sandefur*, 14 Ark. 568 (1854); *Burt v. Williams*, 24 Ark. 91 (1863).

The legislature can not authorize masters in chancery to issue injunctions. *Ex parte Kennedy*, 11 Ark. 598 (1851); *Scoggin v. Taylor*, 13 Ark. 380 (1853); *In re Cornelius*, 14 Ark. 675 (1854).

The legislature can not abridge the power of the courts to punish for contempt. *State v. Morrill*, 16 Ark. 384 (1855).

The legislature can not prescribe for the courts rules of interpretation. *Files v. Fuller*, 44 Ark. 273 (1884).

The legislature can not require the Supreme Court to give its decisions in writing. *Vaughn v. Harp*, 49 Ark. 160, 4 S.W. 751 (1886).

For the legislature to declare the intent of a prior legislature and make the declaration retroactive so as to affect an interpretation already rendered by the courts is an abuse of legislative power which violates the separation of powers doctrine. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

The legislature does not have the power or authority to retrospectively abrogate judicial pronouncements of the courts of this State by a legislative interpretation of the law. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

The Legislative Council's practice of reserving the power of "review and advice" in an appropriation bill is a violation of the separation of powers doctrine. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

The legislature's restriction in an appropriation bill limiting the amount of money the Game and Fish Commission may spend on its magazine violates the separation of powers doctrine and Ark. Const. Amend. 35. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

In the absence of specific constitutional authority, the legislature may not authorize or require courts to appoint officers who have nothing to do with the administration of justice. *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993).

—Validity of Acts.

The party alleging that legislation is arbitrary has the burden of proving that there is no rational basis for the legislative act and, regardless of the evidence introduced by the moving party, the legislation is presumed to be valid and is to be upheld if the judicial branch finds a rational basis for it; it is not for the judicial branch to decide from evidence introduced by the moving party whether the legislative branch acted wisely. *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 916 S.W.2d 95 (1996).

Section 16-81-114, which allows a warrantless arrest for gas theft, is not an unconstitutional violation of the separation of powers. *State v. Lester*, 343 Ark. 662, 38 S.W.3d 313 (2001).

Cited: *Howell v. Howell*, 213 Ark. 298, 208 S.W.2d 22 (1948); *Harvey v. Ridgeway*, 248 Ark. 35, 450 S.W.2d 281 (1970); *Abbott v. State*, 256 Ark. 558, 508 S.W.2d 733 (1974); *Martindale v. Honey*, 259 Ark. 416, 533 S.W.2d 198 (1976); *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978); *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978); *Nicholas v. State*, 268 Ark. App. 541, 595 S.W.2d 237 (Ct. App. 1980); *Thorne v. State*, 269 Ark. 556, 601 S.W.2d 886 (1980); *Curry v. State*, 279 Ark. 153, 649 S.W.2d 833 (1983); *In re Proposed Local Rules*, 284 Ark. 133, 682 S.W.2d 452 (1984); *Karr v. Townsend*, 606 F. Supp. 1121 (W.D. Ark. 1985); *Sides v. State*, 285 Ark. 323, 686 S.W.2d 434 (1985); *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992); *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992); *Four County Regional Solid Waste Mgt. Dist. Bd. v. Sunray Servs., Inc.*, 334 Ark. 118,

971 S.W.2d 255 (1998); Griffen v. Ark. — Ark. —, — S.W.3d —, 2003 Ark. LEXIS Judicial Discipline & Disability Comm'n, 634 (Nov. 20, 2003).

ARTICLE 5

LEGISLATIVE DEPARTMENT

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- [37.] Laws — Enactment — Majority required.
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- [40.] General appropriation bill — Enactment.
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RESEARCH REFERENCES

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 275 et seq.

C.J.S. 16 C.J.S., Constitutional Law, § 113 et seq.

§ 1. Initiative and Referendum.

The legislative power of the people of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but the people reserve to themselves the power to propose legislative measures, laws and amendments to the Constitution, and to enact or reject the same at the polls independent of the General Assembly; and also reserve the power, at their own option to approve or reject at the polls any entire act or any item of an appropriation bill.

Initiative. The first power reserved by the people is the initiative. Eight per cent of the legal voters may propose any law and ten per cent may propose a constitutional amendment by initiative petition and every such petition shall include the full text of the measure so proposed. Initiative petitions for state-wide measures shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon; provided, that at least thirty days before the aforementioned filing, the proposed measure shall have been published once, at the expense of the petitioners, in some paper of general circulation.

Referendum. The second power reserved by the people is the referendum, and any number not less than six per cent of the legal voters may, by petition, order the referendum against any general Act, or any item of an appropriation bill, or measure passed by the General Assembly, but the filing of a referendum petition against one or more items, sections or parts of any such act or measure shall not delay the remainder from becoming operative. Such petition shall be filed with the Secretary of State not later than ninety days after the final adjournment of the session at which such Act was passed, except when a recess or adjournment shall be taken temporarily for a longer period than ninety days, in which case such petition shall be filed not later than ninety days after such recess or temporary adjournment. Any measure referred to the people by referendum petition shall remain in abeyance until such vote is taken. The total number of votes cast for the office of Governor in the last preceding general election shall be the basis upon which the number of signatures of legal voters upon state-wide initiative and referendum petitions shall be computed.

Upon all initiative or referendum petitions provided for in any of the sections of this article, it shall be necessary to file from at least fifteen of the counties of the State, petitions bearing the signature of not less than one-half of the designated percentage of the electors of such county.

Emergency. If it shall be necessary for the preservation of the public peace, health and safety that a measure shall become effective without delay, such necessity shall be stated in one section, and if upon a ye and nay vote two-thirds of all the members elected to each house, or two-thirds of all the members elected to city or town councils, shall vote upon separate roll call in favor of the measure going into immediate operation, such emergency measure shall become effective without delay. It shall be necessary, however, to state the fact which constitutes such emergency. Provided, however, that an emergency shall not be declared on any franchise or special privilege or act creating any vested right or interest or alienating any property of the State. If a referendum is filed against any emergency measure such measure shall be a law until it is voted upon by the people, and if it is then rejected by a majority of the electors voting thereon, it shall be thereby repealed. The provision of this sub-section shall apply to city or town councils.

Local for Municipalities and Counties. The initiative and referendum powers of the people are hereby further reserved to the legal

voters of each municipality and county as to all local, special and municipal legislation of every character in and for their respective municipalities and counties, but no local legislation shall be enacted contrary to the Constitution or any general law of the State, and any general law shall have the effect of repealing any local legislation which is in conflict therewith.

Municipalities may provide for the exercise of the initiative and referendum as to their local legislation. General laws shall be enacted providing for the exercise of the initiative and referendum as to counties. Fifteen per cent of the legal voters of any municipality or county may order the referendum, or invoke the initiative upon any local measure. In municipalities the number of signatures required upon any petition shall be computed upon the total vote cast for the office of mayor at the last preceding general election; in counties upon the office of circuit clerk. In municipalities and counties the time for filing an initiative petition shall not be fixed at less than sixty days nor more than ninety days before the election at which it is to be voted upon; for a referendum petition at not less than thirty days nor more than ninety days after the passage of such measure by a municipal council; nor less than ninety days when filed against a local or special measure passed by the General Assembly.

Every extension, enlargement, grant, or conveyance of a franchise or any rights, property, easement, lease, or occupation of or in any road, street, alley or any part thereof in real property or interest in real property owned by municipalities, exceeding in value three hundred dollars, whether the same be by statute, ordinance, resolution, or otherwise, shall be subject to referendum and shall not be subject to emergency legislation.

GENERAL PROVISIONS

Definition. The word "measure" as used herein includes any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character.

No Veto. The veto power of the Governor or mayor shall not extend to measures initiated by or referred to the people.

Amendment and Repeal. No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any city council, except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly, or of the city council, as the case may be.

Election. All measures initiated by the people whether for the State, county, city or town, shall be submitted only at the regular elections, either State, congressional or municipal, but referendum petitions may be referred to the people at special elections to be called by the proper official, and such special elections shall be called when fifteen per cent of the legal voters shall petition for such special election, and if the referendum is invoked as to any measure passed by a city or town council, such city or town council may order a special election.

Majority. Any measure submitted to the people as herein provided shall take effect and become a law when approved by a majority of the votes cast upon such measure, and not otherwise, and shall not be required to receive a majority of the electors voting at such election. Such measures shall be operative on and after the thirtieth day after the election at which it is approved, unless otherwise specified in the Act.

This section shall not be construed to deprive any member of the General Assembly of the right to introduce any measure, but no measure shall be submitted to the people by the General Assembly, except a proposed constitutional amendment or amendments as provided for in this Constitution.

Canvass and Declaration of Results. The result of the vote upon any State measure shall be canvassed and declared by the State Board of Election Commissioners (or legal substitute therefor); upon a municipal or county measure, by the county election commissioners (or legal substitute therefor).

Conflicting Measures. If conflicting measures initiated or referred to the people shall be approved by a majority of the votes severally cast for and against the same at the same election, the one receiving the highest number of affirmative votes shall become law.

THE PETITION

Title. At the time of filing petitions the exact title to be used on the ballot shall by the petitioners be submitted with the petition, and on state-wide measures, shall be submitted to the State Board of Election Commissioners, who shall certify such title to the Secretary of State, to be placed upon the ballot; on county and municipal measures such title shall be submitted to the county election board and shall by said board be placed upon the ballot in such county or municipal election.

Limitation. No limitation shall be placed upon the number of constitutional amendments, laws, or other measures which may be proposed and submitted to the people by either initiative or referendum petition as provided in this section. No petition shall be held invalid if it shall contain a greater number of signatures than required herein.

Verification. Only legal votes shall be counted upon petitions. Petitions may be circulated and presented in parts, but each part of any petition shall have attached thereto the affidavit of the person circulating the same, that all signatures thereon were made in the presence of the affiant, and that to the best of the affiant's knowledge and belief each signature is genuine, and that the person signing is a legal voter and no other affidavit or verification shall be required to establish the genuineness of such signatures.

Sufficiency. The sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the State, which shall have original and exclusive jurisdiction over all such causes. The sufficiency of all local

petitions shall be decided in the first instance by the county clerk or the city clerk as the case may be, subject to review by the chancery court.

Court Decisions. If the sufficiency of any petition is challenged such cause shall be a preference cause and shall be tried at once, but the failure of the courts to decide prior to the election as to the sufficiency of any such petition, shall not prevent the question from being placed upon the ballot at the election named in such petition, nor militate against the validity of such measure, if it shall have been approved by a vote of the people.

Amendment of Petition. If the Secretary of State, county clerk or city clerk, as the case may be, shall decide any petition to be insufficient, he shall without delay notify the sponsors of such petition, and permit at least thirty days from the date of such notification, in the instance of a state-wide petition, or ten days in the instance of a municipal or county petition, for correction or amendment. In the event of legal proceedings to prevent giving legal effect to any petition upon any grounds, the burden of proof shall be upon the person or persons attacking the validity of the petition.

Unwarranted Restrictions Prohibited. No law shall be passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions; but laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions.

Publication. All measures submitted to a vote of the people by petition under the provisions of this section shall be published as is now, or hereafter may be provided by law.

Enacting Clause. The style of all bills initiated and submitted under the provisions of this section shall be, "Be It Enacted by the People of the State of Arkansas, (municipality or county, as the case may be)." In submitting measures to the people, the Secretary of State and all other officials shall be guided by the general election laws or municipal laws as the case may be until additional legislation is provided therefor.

Self-Executing. This section shall be self-executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people. [As amended by Const. Amend. 7]

Publisher's Notes. The original language of this section was "The legislative power of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives." An earlier amendment in 1910 to this section was superseded by Ark. Const. Amend. 7. See Acts 1909, p. 1238.

Article 5, sec. 1, of Amendment 7, pro-

vided: "This amendment to the Constitution of the State be, and the same shall be in substitution of the Initiative and Referendum Amendment, approved February 19, 1909, as the same appears in the Acts of Arkansas for 1909, on pages 1239 and 1240 of the volume containing the same; and that the said amendment (and the Act of the General Assembly to carry out the

same, approved June 30, 1911, so far as the same is in conflict herewith), be and the same are hereby repealed.”

This amendment was adopted at the general election of Nov. 2, 1920, by a vote

of 86,360 for and 43,662 against. It was declared lost by the Speaker of the House on Jan. 15, 1921, but was declared adopted in *Brickhouse v. Hill*, 167 Ark. 513, 268 S.W. 865 (1925).

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—Emergency clause.

—Vested rights.

In General.

The initiative or referendum does not abrogate the existing Constitution and laws of the state except such provisions as are necessarily repugnant thereto. *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656 (1912) (decision under prior Constitutional provision).

The choice of how this amendment is to be implemented to meet new conditions rests with the legislature, not with the courts. *Czech v. Munson*, 280 Ark. 219, 656 S.W.2d 696 (1983).

The Supreme Court will make a more detailed examination and analysis of the proposed ballot title than it does the popular name. The popular name is designed primarily to identify the proposal, while the ballot title is designed to adequately summarize the provisions of the proposal and be complete enough to convey to the voter an intelligible idea of the scope and import of the proposal. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988).

The question is not how the members of the court feel concerning the wisdom of a proposed amendment, but rather whether the requirements for submission of the proposal to the voters have been met. It is the function of the court to see that the ballot title (and popular name) are: (1) intelligible, (2) honest, and (3) impartial. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988).

This amendment's reservation to the people of the initiative power lies at the heart of our democratic institutions. *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994).

Until appropriate legislative action is taken to correct the problems attendant to proposals submitted under this amendment, citizens can continue to expect measures to be removed from the ballot immediately prior to the election; the people of Arkansas deserve an initiative and referendum procedure which allows them the confidence that measures, after having been adequately reviewed, will not be removed from the ballot. The sponsors of initiative proposals should also be assured their ballot titles and proposed measures meet required guidelines and rules before

they spend their time, energy, and monies in getting their proposal before the voters. *Page v. McCuen*, 318 Ark. 342, 884 S.W.2d 951 (1994).

Construction.

This amendment should be liberally construed in order to meet the purposes for which it was adopted. *Gregg v. Hartwick*, 292 Ark. 528, 731 S.W.2d 766 (1987); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992); *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992).

In determining the sufficiency of a ballot title, the Supreme Court will give a liberal construction and interpretation of the requirements of this amendment in order to secure its purposes to reserve to the people the right to adopt, reject, approve, or disapprove legislation. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

In common legal parlance, a "bill" is a draft of an act of the legislature before it becomes law; under this amendment, the people of this state have the power to enact "bills" into laws by direct vote, and the term "bills," as used in the enacting clause section of this amendment, does not refer to statewide constitutional amendments but only to initiated proposals where the people are seeking to enact their own laws. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

The Supreme Court is liberal in construing this section and in determining the sufficiency of a ballot title under this amendment. *Bailey v. McCuen*, 318 Ark. 277, 884 S.W.2d 938 (1994).

This section, in its present form, does not afford leeway for innovative case interpretations of substantial compliance; its language is clear that the provision shall be treated as mandatory. *Mertz v. States*, 318 Ark. 390, 885 S.W.2d 853 (1994).

Purpose.

The lawmaking power given to the people to propose and adopt laws by initiative petition was intended to supplement existing legislative authority in the General Assembly. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349

(1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

The provisions of this amendment to the Arkansas Constitution reflect the principle that no local legislation may be enacted which contravene general laws. *Camden Community Dev. Corp. v. Sutton*, 339 Ark. 368, 5 S.W.3d 439 (1999).

Applicability.

This amendment became part of the State Constitution upon its adoption, it fits into that organic body, displacing whatever may be in conflict or repugnant to its provisions, and is self-executing. *Priest v. Mack*, 194 Ark. 788, 109 S.W.2d 665 (1937).

This amendment does not apply to an election to change the form of a city government. *Dingle v. City of Eureka Springs*, 242 Ark. 382, 413 S.W.2d 641 (1967).

This amendment does not govern constitutional amendments proposed by the General Assembly. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

Proposed amendment regarding congressional term limits was procedural in nature, purporting to empower the electorate with an indirect and prohibited means to propose an amendment to the United States Constitution; such a procedure is not encompassed within the initiative powers reserved to the people of this state in this section. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

Because an ordinance was new legislation with future ramifications, it was a legislative matter subject to a referendum as provided by this amendment. *Summit Mall Co., LLC v. Lemond*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 650 (Dec. 4, 2003).

Administrative Actions.

The powers of initiative and referendum reserved to the people do not extend to administrative actions. *Camden Community Dev. Corp. v. Sutton*, 339 Ark. 368, 5 S.W.3d 439 (1999).

Appellate Review.

Appellate review of the sufficiency of a proposed measure includes a review of whether the measure's proponents are entitled to invoke the direct initiative pro-

cess when such issue is properly presented. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

Substantive constitutional challenges differ from procedural challenges in that the former necessarily involve fact-specific issues and, thus, are not ripe for review until the proposed measure becomes law and a case in controversy arises. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

Ballot Title.

In addition to identification of the measure the ballot title must be (1) intelligible, (2) honest, and (3) impartial. *Shepard v. McDonald*, 189 Ark. 29, 70 S.W.2d 566 (1934); *Bailey v. Hall*, 198 Ark. 815, 131 S.W.2d 635 (1939); *Sturdy v. Hall*, 204 Ark. 785, 164 S.W.2d 884 (1942); *Hoban v. Hall*, 229 Ark. 416, 316 S.W.2d 185 (1958); *Leigh v. Hall*, 232 Ark. 558, 339 S.W.2d 104 (1960); *Fletcher v. Bryant*, 243 Ark. 864, 422 S.W.2d 698 (1968); *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980); *Dust v. Riviere*, 277 Ark. 1, 638 S.W.2d 663 (1982); *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 677 S.W.2d 846 (1984); *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

The title of the act may be used as the ballot title if it fairly alleges the general purpose of the act. *Coleman v. Sherrill*, 189 Ark. 843, 75 S.W.2d 248 (1934).

Statute requiring submission to Attorney General of ballot title of act upon which referendum is proposed at the time the petition is submitted before circulation of the petition in no way curtails the operation of this amendment. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

There is no language in this amendment pertaining to ballot titles for legislative proposals of constitutional amendments. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976); *Becker v. Riviere*, 277 Ark. 252, 641 S.W.2d 2 (1982).

While neither the length nor complexity of the ballot title of a proposed constitutional amendment should be a controlling factor in determining the sufficiency of the

ballot title, it is a consideration since the great majority of voters will derive their information about the amendment from the ballot title. *Dust v. Riviere*, 277 Ark. 1, 638 S.W.2d 663 (1982).

It is difficult to prepare a perfect ballot title; it is sufficient if it informs the voters with such clarity that they can cast their ballot with a fair understanding of the issue presented. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988).

A ballot title, like the popular name, must be intelligible, honest, and impartial. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

The ballot title need not recite all of the details of the proposal; however, if the information would give the elector "serious ground for reflection," it is not a mere detail and must be disclosed. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

The ballot title must accurately reflect the general purposes and fundamental provisions of the proposed initiative so that an elector does not vote for a proposal based on its description in the ballot title when, in fact, the vote is for a position he might oppose. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

Proposed lottery amendment ballot title held to be insufficient. *Finn v. McCuen*, 303 Ark. 418, 798 S.W.2d 34 (1990).

Under Ark. Const., Art. 19, § 22, the standard of review applied to ballot titles is: (1) whether the ballot title is sufficient to "distinguish and identify" the proposal, and (2) whether the ballot title is a "manifest fraud upon the public." This is a different and less demanding standard than the standard applicable to initiatives under this amendment. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke. *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

The ballot title must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

A ballot title must convey an intelligible

idea of the scope and significance of a proposed change in the law. *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994).

—Amendment.

Provision permitting 30 days for amendment of petition applies to the ballot title, but this provision applies only in case of adverse action on part of the Secretary of State and has no application to original suits brought in the Supreme Court. *Walton v. McDonald*, 192 Ark. 1155, 97 S.W.2d 81 (1936).

—Appellate Review.

The Supreme Court has slightly different standards of review depending on whether the allegation made is that information is omitted from the ballot title or that statements in the title are misleading: if the omitted information would, if included, give the voter serious ground for reflection on how to vote, this is a material omission and the ballot title is fatally deficient, on the other hand, if the statements contained in the ballot title have a tendency to mislead the voter so as to thwart a fair understanding of the issues presented, the ballot title is likewise insufficient. *Bailey v. McCuen*, 318 Ark. 277, 884 S.W.2d 938 (1994).

The standard of appellate review in the aftermath of an Attorney General's modification and certification of a ballot title is as follows: the Supreme Court will consider the fact of Attorney General certification and attach some significance to it, but will not defer to the Attorney General's opinion or give it presumptive effect; in sum, sufficiency of a ballot title is a matter of law to be decided by the Supreme Court. *Bailey v. McCuen*, 318 Ark. 277, 884 S.W.2d 938 (1994).

This amendment clearly conferred original and exclusive jurisdiction upon the Supreme Court to review the Secretary of State's decision as to the sufficiency of the petition; additionally, a challenger could seek to have the sufficiency of an initiative petition reviewed by the Supreme Court either prior to the collection of signatures under 1999 Ark. Acts 877, or after signatures have been gathered and, thus, Act 877 merely provided a procedure where a taxpayer and voter could seek an early review of a ballot title's legal sufficiency prior to the gathering of signatures. Ward

v. Priest, 350 Ark. 345, 86 S.W.3d 884 (2002).

Committee to establish a municipal fire department, which circulated a petition to place an ordinance on the city's general election ballot but which was not joined by a local voter, and further, did not purport to represent local voters, lacked standing to intervene in a case concerning the ballot title and initiative petition, or rights which, pursuant to this amendment, were reserved to the local voters. *Comm. to Establish Sherwood Fire Dep't v. Hillman*, 353 Ark. 501, 109 S.W.3d 641 (2003).

—Length.

Under § 7-5-522(c), no voter shall remain in the voting booth longer than five (5) minutes if voters are waiting in line; it requires little imagination to foresee, under these statutory time constraints, the practical difficulty posed to the elector in the voting booth by a ballot title of too much complexity and length in violation of this section. *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994).

Section 7-9-107(b) requires that certified ballot titles be brief and concise; otherwise, voters could well run afoul of § 7-5-522's five-minute limit in voting booths when prospective voters are waiting in line. *Bailey v. McCuen*, 318 Ark. 277, 884 S.W.2d 938 (1994).

A ballot title pertaining to the Tobacco Settlement Proceeds Act was not insufficient merely because it was lengthy and covered a complex subject, notwithstanding that it contained 994 words and was "riddled with clause upon clause and modifier upon modifier." *Walker v. Priest*, 342 Ark. 410, 29 S.W.3d 657 (2000).

--Misleading.

Ballot title misleading and confusing. *Westbrook v. McDonald*, 184 Ark. 740, 43 S.W.2d 356 (1931); *Walton v. McDonald*, 192 Ark. 1155, 97 S.W.2d 81 (1936); *Johnson v. Hall*, 229 Ark. 404, 316 S.W.2d 197 (1958); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958); *Dust v. Riviere*, 277 Ark. 1, 638 S.W.2d 663 (1982); *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 677 S.W.2d 846 (1984).

The ballot title of proposed Ark. Const. Amend. 4, "An Amendment To Authorize A State Lottery, Nonprofit Bingo, Pari-Mutuel Wagering, And Additional Games

Of Chance At Race Track Sites," failed to convey an intelligible idea of the scope and import of proposed Ark. Const. Amend. 4, and the lengthy text was misleading and tinged with partisan coloring. *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994).

An initiative petition was insufficient because the ballot title was misleading due to various omissions and misstatements in its terms, particularly with respect to its hidden amendments of §§ 11-9-715, regarding attorney's fees, and 11-9-704, regarding construction of Chapter 9 of Title 11. *Bailey v. McCuen*, 318 Ark. 277, 884 S.W.2d 938 (1994).

A ballot title pertaining to the Tobacco Settlement Proceeds Act was not insufficient on the basis that there were serious material omissions and misleading tendencies that caused it to be deficient. *Walker v. Priest*, 342 Ark. 410, 29 S.W.3d 657 (2000).

—Partisan Coloring.

Ballot title invalid for partisan coloring. *Johnson v. Hall*, 229 Ark. 400, 316 S.W.2d 194 (1958); *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 677 S.W.2d 846 (1984).

—Preamble.

Preamble of a proposed amendment's ballot title was not a part of the text of the proposed amendment, and for this reason alone, its verbiage should not have been included in the amendment's ballot title. *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

—Sufficiency.

Ballot title sufficient under this amendment. *Hogan v. Hall*, 198 Ark. 681, 130 S.W.2d 716 (1939); *Sturdy v. Hall*, 204 Ark. 785, 164 S.W.2d 884 (1942); *Hope v. Hall*, 229 Ark. 407, 316 S.W.2d 199 (1958); *Leigh v. Hall*, 232 Ark. 558, 339 S.W.2d 104 (1960); *McDonald v. Bryant*, 238 Ark. 338, 381 S.W.2d 736 (1964); *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980); *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988); *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

The ballot title of proposed Ark. Const. Amend. 5, which by popular name was to authorize one casino in Crittenden County, create an Arkansas Casino Gam-

ing Commission and, permit the levy of casino taxes to fund crime prevention and law enforcement, was deficient because the title omitted portions of the proposal which were important for a fair understanding of the amendment. *Page v. McCuen*, 318 Ark. 342, 884 S.W.2d 951 (1994).

In order to preclude a legislature from defeating direct expression of popular will through the power of referendum, legislative amendments which effect legislative acts subject to referendum are not considered in evaluating the sufficiency of the ballot title; this must be if the people's reserved right of referendum is to have any meaning. *Walker v. McCuen*, 318 Ark. 508, 886 S.W.2d 577 (1994).

The ballot title of the referendum on Acts 1992 (2d Ex. Sess.), No. 7, codified as § 26-57-901 et seq., held sufficient. *Walker v. McCuen*, 318 Ark. 508, 886 S.W.2d 577 (1994).

Ballot title for proposed amendment authorizing a state-owned lottery was upheld where the title accurately summarized the text of the proposed Amendment and was plain and organized in a coherent manner, no material omissions were made, and the title was not misleading; the length of 482 words was not too long and the presentation of multiple considerations was not too complex or confusing. *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996).

The ballot title for proposed amendment regarding a state lottery and other gambling contained material omissions that rendered the ballot title fatally defective. *Parker v. Priest*, 326 Ark. 386, 931 S.W.2d 108 (1996).

The popular name and ballot title of a proposed amendment regarding lottery, bingo, raffle, and video terminal games held insufficient. *Crochet v. Priest*, 326 Ark. 338, 931 S.W.2d 128 (1996).

Although the proposed amendment regarding casino gambling was twenty pages long and its sponsors took approximately 550 words in the ballot title to summarize seventy-five subsections contained in the proposal, the length alone did not render the ballot title invalid; the title was held invalid because there were numerous material omissions that clearly prevented a fair understanding of the Amendment and would give the voter serious ground for reflection on whether to

vote for the measure. *Scott v. Priest*, 326 Ark. 328, 932 S.W.2d 746 (1996).

The ballot title of a proposed amendment, considered along with its popular name, was insufficient since it was misleading, both by amplification and omission, and thwarted a fair understanding of the issues presented and also failed to convey to the voter the scope and import of the proposed measure, which would have abolished state and local sales and use taxes. *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 669 (2000).

Effective Date.

Plugge v. McCuen, 310 Ark. 654, 841 S.W.2d 139 (1992).

—Legislative Acts.

Absent an emergency clause, legislative acts become effective 90 days after the adjournment of the session at which enacted, and until then they are inoperative even though the referendum is not invoked against them. *Fulkerson v. Refunding Bd.*, 201 Ark. 955, 147 S.W.2d 980 (1940).

—Ordinances.

The effectiveness of an emergency ordinance not providing for fine, penalty, or forfeiture should not be suspended until publication, at least if it is published within a reasonable time. *Kemp v. Simmons*, 244 Ark. 1052, 428 S.W.2d 59 (1968).

Elections.

No court of last resort has ever held that, under a provision for referendum, voters might order an election so that they might vote as to whether they should be permitted to vote in another election on a pending proposal. *Chastain v. City of Little Rock*, 208 Ark. 142, 185 S.W.2d 95 (1945); *Scroggins v. Kerr*, 217 Ark. 137, 228 S.W.2d 995 (1950).

Validity of election wherein countywide stock law was adopted was not affected by failure of court to rule on action attacking validity of petition prior to the election where record shows no request for trial nor objection for failure to grant a trial. *Herrington v. Hall*, 238 Ark. 156, 381 S.W.2d 529 (1964).

—Annexation.

A resolution approving an annexation pertains to an enlargement or extension of the services offered by the city to a new

area; therefore, when the city passes the resolution approving the annexation, the voters acquire a right to hold an election. Since confirmation of the annexation is dependent on the adoption of an ordinance or resolution of acceptance by the city council, such action cannot be considered merely the execution of a law already in existence but the power exercised by the city council prescribes a new law and is municipal legislation. *Gregg v. Hartwick*, 292 Ark. 528, 731 S.W.2d 766 (1987).

—Contest.

Chancery courts do not have jurisdiction to try election contests, and a demurrer to a petition attacking the validity of an election after the same had been held was properly sustained by the chancery court. *Rich v. Walker*, 237 Ark. 586, 374 S.W.2d 476 (1964).

—Date.

While the setting of the date for a referendum on a municipal ordinance is a matter of legislative discretion, where the election was set at more than 21 months away, it was an attempt to thwart the purpose of this amendment as such election must be within a reasonable time. *Lewis v. Conlee*, 258 Ark. 715, 529 S.W.2d 132 (1975).

—Local Option.

This amendment has no application to local option petitions, which are governed by statute. *Johnston v. Bramlett*, 193 Ark. 71, 97 S.W.2d 631 (1936); *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956); *Armstrong v. Sturch*, 235 Ark. 571, 361 S.W.2d 77 (1962); *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979).

Where statute provided that every petition for a local option election must be filed in the manner provided in this amendment for county initiative measures, a petition for a local option election which was filed 55 days before the November general election was invalid. *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976).

—Notice.

Publication of initiative measures affecting local or county government is governed by the general law as to legal notices. *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72 (1935); *Cowling v. Foreman*, 238 Ark. 677, 384 S.W.2d 251 (1964);

Johnson v. Munger, 260 Ark. 613, 542 S.W.2d 753 (1976).

—Special Elections.

The matter of calling a special election, if not exercised by the electors, rests in the discretion of the county judge and the quorum court, either of which may determine the necessity of calling a special election. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Since the failure of the courts to determine the sufficiency of a petition before the election does not militate against the validity of a measure which has been approved by a vote of the people, the 15 percent requirement is not jurisdictional. *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979).

—Emergency.

Where county quorum court called a special election to submit a one-cent sales-and-use tax to its voters, it was not enacting law and, thus, no emergency clause was required. *Sanders v. County of Sebastian*, 324 Ark. 433, 922 S.W.2d 334 (1996).

Funds.

Legislature had no authority to appropriate funds from game protection fund for payment of bounties for killing of wolves to prevent destruction of cattle and other livestock. *Arkansas Game & Fish Comm'n v. Edgmon*, 218 Ark. 207, 235 S.W.2d 554 (1951).

Initiative and Referendum.

The initiative and referendum amendment does not abrogate the existing Constitution. *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656 (1912).

Initiatives.

Any law that the General Assembly or the local legislative body could have enacted prior to the adoption of the Initiative and Referendum Amendment may, subsequent thereto, be adopted by the people. *Tindall v. Searan*, 192 Ark. 173, 90 S.W.2d 476 (1936); *White v. Chotard*, 202 Ark. 692, 152 S.W.2d 552 (1941); *Cochran v. Black*, 240 Ark. 393, 400 S.W.2d 280 (1966).

Under this amendment, the people of the county could not enact a law contrary to a general law which operates uniformly throughout the state. *Tindall v. Searan*, 192 Ark. 173, 90 S.W.2d 476 (1936); *Allen*

v. Langston, 216 Ark. 77, 224 S.W.2d 377 (1949).

The people are not subject to the same restrictions as the General Assembly for the delegation of authority, and an initiative to base the maximum interest rate on the federal discount rate is not in violation this section. *W.E. Tucker Oil Co. v. Portland Bank*, 285 Ark. 453, 688 S.W.2d 293 (1985).

—Adoption.

In suit to restrain enforcement of an initiative act and to have the act declared invalid, exhibits attached to motion to dissolve temporary restraining order showing that jurisdictional requirements were met in respect of initiation of the act showed prima facie that the act was legally adopted. *Sager v. Hibbard*, 203 Ark. 672, 158 S.W.2d 922 (1942).

—Amendment.

Statute providing for impounding of stock running at large as an aid to the enforcement of initiated act prohibiting the allowing of stock to run at large did not have the effect of amending the initiated act so as to require passage by a two-thirds vote of all the members of each house of the General Assembly. *Staples v. Bishop*, 225 Ark. 936, 286 S.W.2d 505 (1956).

Statute did not receive the required two-thirds vote of all elected members of each house to amend initiated act so as to allow a municipality in a dry county to have a separate vote on the sale of beer in such municipality. *Carter v. Reamey*, 232 Ark. 211, 335 S.W.2d 298 (1960).

—Enacting Clause.

The enacting clause provided in the amendment referred only to bills initiated by the people and did not repeal Ark. Const., Art. 5, § 19, which provides the style for legislative bills. *Jackson v. State*, 101 Ark. 473, 142 S.W. 1153 (1912); *Ferrell v. Keel*, 105 Ark. 380, 151 S.W. 269 (1912) (preceding decisions under prior Constitutional provisions).

Petition proposing an initiated act for a county was invalid where act proposed did not contain an enacting clause. *Hailey v. Carter*, 221 Ark. 20, 251 S.W.2d 826 (1952).

An enacting clause is not required for a proposed statewide constitutional amendment. *United States Term Limits, Inc. v.*

Hill, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

The omission of the enacting clause was not fatal to Ark. Const. Amend. 73 because this amendment makes no requirement for an enacting clause for statewide initiated petitions to amend the Arkansas Constitution. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

All bills initiated must be submitted with the following language set forth from this section: "Be it enacted by the people of the State of Arkansas (or municipality, or county, as the case may be)." *Mertz v. States*, 318 Ark. 390, 885 S.W.2d 853 (1994).

—Repeal.

A bill repealing an initiated bill adopted by a county fixing the salaries of its officers is required to be presented to the Governor for his approval or disapproval. *Whaley v. Independence County*, 212 Ark. 320, 205 S.W.2d 861 (1947).

An act passed by more than two-thirds vote of both houses of the General Assembly was sufficient to repeal any conflict existing between it and a previously enacted initiated act. *Townsend v. City of Helena*, 244 Ark. 228, 424 S.W.2d 856 (1968), *cert. denied*, 393 U.S. 917, 89 S. Ct. 244, 21 L. Ed. 2d 203 (1968).

The mayor is not an elected member of the city council but only an ex-officio member by virtue of his executive position and, therefore, his vote cannot be used in amending or repealing any part of an initiated act. *Thompson v. Younts*, 282 Ark. 524, 669 S.W.2d 471 (1984).

—Rezoning.

The rejection by a city board of a rezoning proposal did not constitute any legislative action by the board and, therefore, the rezoning issue was not subject to an initiated action by the people. *Camden Community Dev. Corp. v. Sutton*, 339 Ark. 368, 5 S.W.3d 439 (1999).

—Salaries of County Officers.

Act fixing salaries of county officers can be initiated and adopted by county electors under Initiative and Referendum Amendment and it would not be in conflict

with the general law. *Tindall v. Searan*, 192 Ark. 173, 90 S.W.2d 476 (1936).

The county assessor is merely a county officer, his salary may be fixed by county under Initiative and Referendum Amendment, and money paid by the state as half of the assessor's salary is not over and above the amount provided by the initiated act. *Dew v. Ashley County*, 199 Ark. 361, 133 S.W.2d 652 (1939).

Act amending statute fixing salaries of county judges was held not to repeal initiated act of a certain county fixing the salary of its county judge. *Warfield v. Chotard*, 202 Ark. 837, 153 S.W.2d 168 (1941).

Stilley v. Young, 343 Ark. 760, 38 S.W.3d 895 (2001).

—Sales and Use Taxes.

An initiative petition which proposed an ordinance to reduce the percentage rate of an existing county sales and use tax was facially invalid and failed to comply with Ark. Const. Amend. 7 because it was contrary to the specific enactment procedures mandated by § 26-74-201 et seq. *Stilley v. Henson*, 342 Ark. 346, 28 S.W.3d 274 (2000).

—Sale of County Hospital.

An initiative petition which proposed to require a county to sell its county hospital and clearly stated that a specified attorney would conduct and administer the sale of the hospital in exchange for a commission fee of five percent of the gross receipts from the sale was invalid as it was contrary to state law on its face. *Stilley v. Makris*, 343 Ark. 673, 38 S.W.3d 889 (2001); *Stilley v. Young*, 343 Ark. 760, 38 S.W.3d 895 (2001).

—Term Limits.

A county initiative setting terms limits for county officials violated the proscription set forth in Ark. Const. Amend. 7 to the Arkansas Constitution in that it was local legislation that conflicted with the general law of the state. *Allred v. McLoud*, 343 Ark. 35, 31 S.W.3d 836 (2000).

Judicial Review.

Supreme Court cannot enjoin the Secretary of State from acting on the sufficiency of a petition to have a proposed bill submitted to referendum because, until the Secretary of State has acted and his action has been challenged, the Supreme Court

has nothing to review. *Rambo v. Hall*, 195 Ark. 502, 112 S.W.2d 951 (1938).

Due to lack of time to present all evidence prior to voting date, complaint by taxpayers to test sufficiency of referendum petition was dismissed, notwithstanding that commissioner had reported to the court that the plaintiffs had established a prima facie case. *Ellis v. Hall*, 221 Ark. 25, 251 S.W.2d 809 (1952).

The Constitution and all its amendments fail to disclose any provision that gives the Arkansas Supreme Court original jurisdiction in a case attacking the regularity of submission to the voters of a constitutional amendment proposed by the legislature. *Berry v. Hall*, 232 Ark. 648, 339 S.W.2d 433 (1960).

Chancery courts have jurisdiction to review the action of the county or city clerk in determining the sufficiency of petitions for elections under this amendment. *Rich v. Walker*, 237 Ark. 586, 374 S.W.2d 476 (1964).

The amendment did not purport to vest any original jurisdiction in the Supreme Court in any proceeding relating to anything except initiated legislation that would have state-wide effect or reference of Acts of the General Assembly to the voters of the state. *American Party v. Brandon*, 253 Ark. 123, 484 S.W.2d 881 (1972).

The Supreme Court had no authority to decide an original action filed under this amendment questioning the ballot title of an initiated act until the petitions were submitted to the Secretary of State and he declared them sufficient or insufficient according to the power vested in him by this amendment. *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986).

Where the circuit court was not being called upon to determine the sufficiency of a local petition, but rather to decide as a matter of law whether or not this section requires an Enacting Clause in a specific instance, the circuit court had subject-matter jurisdiction. *Mertz v. States*, 318 Ark. 390, 885 S.W.2d 853 (1994).

Acts 1999, No. 877, codified as §§ 7-9-501 to 7-9-504, does not run afoul of the provisions of Ark. Const. Amend. 7 as, while Ark. Const. Amend. 7 does contemplate filing the initiative petition with the requisite signatures with the Secretary of State for a sufficiency determination, at no point does it preclude an earlier review

of the text of the popular name and ballot title or the validity of the proposed amendment. *Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000).

Jurisdiction.

The jurisdiction of a suit to question the legal validity of a proposed measure, rather than its sufficiency, is in circuit court. *Mertz v. States*, 318 Ark. 390, 885 S.W.2d 853 (1994).

Legislative Authority.

The legislature may pass any law not prohibited by this Constitution or the Constitution of the United States. See *State v. Ashley*, 1 Ark. 513 (1839); *State v. Fairchild*, 15 Ark. 619 (1855); *Henry v. State*, 26 Ark. 523 (1871); *Straub & Lohman v. Gordon*, 27 Ark. 625 (1872); *Dabbs v. State*, 39 Ark. 353 (1882).

—Delegation.

The General Assembly may authorize counties and municipalities to impose a tax upon stores and places of amusement for local revenue purposes and as a police regulation. *Washington v. State*, 13 Ark. 752 (1853).

The legislature cannot delegate the power to make laws, but it can make a law to delegate the power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. *Boyd v. Bryant*, 35 Ark. 69 (1879).

An act which was to prevent the sale of liquor in a given area at the option of the residents was not a delegation of legislative power; but an act to prohibit the sale was a delegation of such power. *Trammell v. Bradley*, 37 Ark. 374 (1881).

The legislature may not delegate its power but may enact a law imposing a condition on which it will become operative after the expiration of the referendum period. *Miller v. Witcher*, 160 Ark. 479, 254 S.W. 1063 (1923).

Legislative Power.

Legislation which places restrictions not found in the Constitution on the type of legislation which may be submitted to referendum is unconstitutional. *Hammett v. Hodges*, 104 Ark. 510, 149 S.W. 667 (1912) (decision under prior Constitutional provision).

Where an ordinance providing for vote by city electors on question of installing parking meters also provided in detail for

the installation of the meters, there was substantial compliance with applicable statutes and this amendment. *Harrison v. Dowell*, 220 Ark. 182, 246 S.W.2d 721 (1952).

Cases construing acts which did not contain unconstitutional delegation of legislative power. *Rowe v. Housing Auth.*, 220 Ark. 698, 249 S.W.2d 551 (1952); *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955); *Campbell v. Arkansas State Hosp.*, 228 Ark. 205, 306 S.W.2d 313 (1957); *Miles v. Gordon*, 234 Ark. 525, 353 S.W.2d 157 (1962); *Beaumont v. Faubus*, 239 Ark. 801, 394 S.W.2d 478 (1965).

The legislature has no right to delegate the lawmaking power to commissions and boards established by the legislature, but may delegate the power to determine facts upon which the law makes or intends to make its action depend, and general provisions may be set forth with power given to those who are to act under such general provisions to complete the details. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

A city has no power to enter into any contract or to enact any ordinance which would limit the rights of the citizens under the initiative and referendum amendment of the Constitution. *Duncan Parking Meter Corp. v. City of Gurdon*, 146 F. Supp. 280 (W.D. Ark. 1956).

Cases construing acts which contained unconstitutional delegation of legislative power. *Crowly v. Thornbrough*, 226 Ark. 768, 294 S.W.2d 62 (1956); *Cheney v. St. Louis S.W. Ry.*, 239 Ark. 870, 394 S.W.2d 731 (1965); *Czech v. Baer*, 283 Ark. 457, 677 S.W.2d 833 (1984).

Amendments proposed by the legislature are entirely different from those initiated under this amendment and are governed by an entirely different procedure. This amendment does not apply to the procedure submitted by the legislature. *Berry v. Hall*, 232 Ark. 648, 339 S.W.2d 433 (1960).

Local Laws.

Adoption of this provision was intended to reserve to the people the right to pass all local laws affecting the counties. *Tindall v. Searan*, 192 Ark. 173, 90 S.W.2d 476 (1936).

“Measure” Defined.

County election under initiated act for submission of question of prohibition is

not a 'measure', within the meaning of this amendment, to be submitted only at a general election. *Yarbrough v. Beardon*, 206 Ark. 553, 177 S.W.2d 38 (1944).

Municipal Corporations.

The legislature may authorize municipal corporations to establish fire limits. *McKibben v. City of Ft. Smith*, 35 Ark. 352 (1880).

Municipal corporations can legislate only as authorized by the legislature. *Laprairie v. City of Hot Springs*, 124 Ark. 346, 187 S.W. 442 (1916).

Petition.

—In General.

The people of this state may propose either laws or constitutional amendments by initiative petition. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

—Amendment.

Secretary of State is without power to grant additional time beyond 30 days from notification for correction or amendment of petitions. *Wait v. Hall*, 196 Ark. 508, 118 S.W.2d 853 (1938).

After sponsors of an initiative or referendum have been notified by the city clerk that the petition is insufficient, they have 10 days within which to correct or amend the petition, and any appeal from the decision of the clerk shall be taken to chancery court. *Bradley v. Galloway*, 279 Ark. 231, 651 S.W.2d 445 (1983).

—Filing.

Municipalities may exercise the initiative and referendum as to their local legislation and may fix the time for filing petitions. *Cobb v. Burress*, 213 Ark. 177, 209 S.W.2d 694 (1948).

—Initiatives.

The language in this amendment that the time for filing initiative petitions shall be fixed at not less than 60 days nor more than 90 days before the election at which it is to be voted upon simply means that the legislature may not require that the petitions be filed earlier, and an earlier filing does not invalidate such petition. *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937); *Cobb v. Burress*, 213

Ark. 177, 209 S.W.2d 694 (1948); *Armstrong v. Sturch*, 235 Ark. 571, 361 S.W.2d 77 (1962); *Fine v. Van Buren*, 237 Ark. 29, 371 S.W.2d 132 (1963); *Robie v. Bolton*, 260 Ark. 429, 541 S.W.2d 310 (1976).

State officials were granted summary judgment on the county quorum court members' claim that Ark. Const. Amend. 7 and § 26-74-207 were unconstitutional by allowing the members' incarceration where the claim was nothing more than an appeal of a lower state court's finding of contempt and the court members' subsequent incarceration and, as a result, was barred by the Rooker-Feldman doctrine. *Simes v. Huckabee*, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 27033 (E.D. Ark. Sept. 30, 2002).

—Referendum.

The phrase fixing the time for filing a referendum petition on municipal ordinances at "not less than thirty days nor more than ninety days after the passage of such measure by a municipal council" does not mean that a referendum petition cannot be filed less than 30 days after passage of the measure, but that the city must allow at least 30 days for the filing of such petition. *Southern City Distrib. Co. v. Carter*, 184 Ark. 4, 44 S.W.2d 362 (1934).

Thirty-day time allowed by city ordinance, pursuant to power conferred by this section, for filing a referendum petition after the passing of any ordinance was not too short a time. *Railey v. Magnolia*, 197 Ark. 1047, 126 S.W.2d 273 (1939).

Plenary suit against city to enjoin enforcement of ordinance was not a referendum nor effort to obtain a referendum and, thus, provision of ordinance providing that referendum petitions be filed within 30 days after passage of challenged ordinance did not apply. *Stephens v. Springdale*, 233 Ark. 865, 350 S.W.2d 182 (1961).

A petition for referendum upon a city resolution declaring need for a housing authority filed within 30 days after publication of the resolution was filed in time. *Eureka Springs v. Brightman*, 243 Ark. 836, 422 S.W.2d 681 (1968).

Paragraph three of the Local Petitions part of this section, which states that the time for filing referendum petitions is from 30 days to 90 days from the passage of the county measure, is not self-executing because it clearly anticipates that gen-

eral laws may be enacted fixing a time for filing a referendum petition at a time between 30 and 90 days. *Cox v. French*, 277 Ark. 134, 640 S.W.2d 786 (1982).

Where an elector wishes to place a bond issue on a special election ballot, but no votes were tabulated in the most recent general election for circuit clerk, the number of signatures required on the referendum petition should be determined by the total votes cast in the last general election in which votes were cast for the circuit clerk. *Yarbrough v. Witty*, 336 Ark. 479, 987 S.W.2d 257 (1999).

—Form.

The statutory provision as to the form of the referendum petition was not repealed by this amendment. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

When an initiated petition consists of several parts, all the parts constitute one petition and must be considered together. *Czech v. Baer*, 283 Ark. 457, 677 S.W.2d 833 (1984).

—Signatures.

This amendment contemplates that genuine signature of electors be procured. *Hargis v. Hall*, 196 Ark. 878, 120 S.W.2d 335 (1938).

The circulator of a petition is of the nature of an election official; the elector directs, by signing the petition, that the proposed act shall be submitted to the people, and elector must sign his own name in the presence of the circulator so that the circulator may truthfully make the affidavit required. *Sturdy v. Hall*, 201 Ark. 38, 143 S.W.2d 547 (1940).

Secretary of State was authorized to allow 30 days' extension for securing additional signatures where required signatures were obtained but investigation showed 268 signatures were not valid. *Ellis v. Hall*, 219 Ark. 869, 245 S.W.2d 223 (1952).

Signing of an initiative petition counterpart by a canvasser as a petitioner prior to verification of the petition before a notary public does not invalidate the petition or render it untrue in any respect. *Bragg v. Hall*, 226 Ark. 906, 294 S.W.2d 763 (1956).

All names in an initiated petition, even though on different sheets and filed on different dates, should be considered as one petition. The requisite number may be ascertained by adding together the names

of the legal voters signed to the separate sheets that have been filed with the Secretary of State within the time prescribed by the act. *Leigh v. Hall*, 232 Ark. 558, 339 S.W.2d 104 (1960).

Statute providing that the minimum number of signatures required on a referendum petition be computed on the basis of the highest vote cast for a city director at the preceding general election is not unconstitutional as a violation of this amendment. *Czech v. Munson*, 280 Ark. 219, 656 S.W.2d 696 (1983).

Evidence was sufficient to uphold the findings of the master that an insufficient number of signatures was obtained. *Casteel v. McCuen*, 310 Ark. 568, 838 S.W.2d 364 (1992).

Where the signatures to a petition are gathered in areas and places while the canvasser is neither physically or proximately present, substantial compliance is lacking. *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992).

Where signatures were insufficient, proposed initiated act was directed to be removed from the ballot. *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992).

Proposed amendment regarding gambling on horse and dog racing lacked sufficient signatures to qualify for the November 1996 ballot. *Southland Racing Corp. v. Priest*, 326 Ark. 1, 927 S.W.2d 338 (1996).

Signatures collected by a certain canvasser were properly excluded in a proceeding which challenged the sufficiency of a statewide initiative petition where she failed to require petitioners to sign in her presence, left blank petitions at businesses and picked them up later, and replaced names of other canvassers on petitions she received with her own in order to have the petitions notarized. *Roberts v. Priest*, 334 Ark. 503, 975 S.W.2d 850 (1998).

Arkansas had a legitimate state interest in making the signing of a ballot petition a crime in certain instances; the state law regulating the initiative procedure, § 7-9-103, did not restrict political speech and the state's interest in protecting the integrity of its initiative process was paramount. *Hoyle v. Priest*, 265 F.3d 699 (8th Cir. 2001).

—Sufficiency.

After a question is submitted to and

voted upon by the people, sufficiency of the petition is of no importance. *Beene v. Hutto*, 192 Ark. 848, 96 S.W.2d 485 (1936).

Where, after eliminating illegal names, petition falls short of having the requisite number of signers, it becomes insufficient. *Hargis v. Hall*, 196 Ark. 878, 120 S.W.2d 335 (1938).

The 15-day time limit in § 14-14-915(f) for appealing from findings of sufficiency of petitions does not violate this amendment. *Committee for Util. Trimming, Inc. v. Hamilton*, 290 Ark. 283, 718 S.W.2d 933 (1986).

Although the city clerk reviews the sufficiency of ballot petitions, he does not have the authority to determine the legal validity of a proposal, and the jurisdiction of a suit to question the validity of a proposed measure is in circuit court. *Moorman v. Priest*, 310 Ark. 525, 837 S.W.2d 886 (1992).

—Verification.

Exact language is not required in the verification so long as the effect is that the signatures are genuine. *Blocker v. Sewell*, 189 Ark. 924, 75 S.W.2d 658 (1934).

There is no requirement that each page of the petition shall have a separate affidavit, unless a part consisting of only one page is circulated by one solicitor; however, a part may have many pages circulated by one person with one affidavit sufficient for all the pages in that part of the petition. *Blocker v. Sewell*, 189 Ark. 924, 75 S.W.2d 658 (1934).

Absent any explanation to the contrary, it must be presumed that false affidavit of circulator as to genuineness of signatures was made intentionally and, even though affiant did believe that signatures were lawfully obtained, petitions must be excluded where affidavits were necessarily false. *Sturdy v. Hall*, 201 Ark. 38, 143 S.W.2d 547 (1940).

Provision as to the effect to be given the affidavit of a person circulating petition means that the circulator's affidavit is given prima facie verity, but this presumption is not conclusive. *Sturdy v. Hall*, 201 Ark. 38, 143 S.W.2d 547 (1940).

Where the trial court found the affidavits filed by some circulators of petitions for an initiated measure to be false, he was not wrong as a matter of law in excluding entirely the petitions of those affiants. *Parks v. Taylor*, 283 Ark. 486, 678 S.W.2d 766 (1984).

Where an undisputed expert witness testified that certain signatures were "highly probable forgeries," those signatures were properly excluded as forgeries in a proceeding which challenged the sufficiency of a statewide initiative petition. *Roberts v. Priest*, 334 Ark. 503, 975 S.W.2d 850 (1998).

Police Power.

Property is held subject to the proper exercise of the police power by the state or municipalities to which it is delegated. *City of Little Rock v. Barton*, 33 Ark. 436 (1878); *Drew County v. Bennett*, 43 Ark. 364 (1884); *Goetler v. State*, 45 Ark. 454 (1885); *James v. Pine Bluff*, 49 Ark. 199, 4 S.W. 760 (1887).

An act to enforce prompt delivery of goods after payment of freight charges is a police regulation and not violative of the exclusive power of Congress to regulate interstate commerce. *Little Rock & F.S.R.R. v. Hanniford*, 49 Ark. 291, 5 S.W. 294 (1887).

The regulation of the practice of dentistry is a public requirement and does not deprive a citizen of his right to follow a lawful vocation by requiring a condition with which he cannot comply. *Gosnell v. State*, 52 Ark. 228, 12 S.W. 392 (1889).

Popular Name.

Where popular name of act upon which referendum was proposed was not submitted to Attorney General at the time the petition for referendum was submitted to and approved by the Attorney General, the Secretary of State properly refused to certify the petition to the election officials. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

Popular name proposed for constitutional amendment "act to repeal the full crew laws" was not misleading since the acts that it proposed to repeal are generally known as full crew laws and the term full crew law is defined in the dictionary. *Hope v. Hall*, 229 Ark. 407, 316 S.W.2d 199 (1958).

The popular name of the "Arkansas Minimum Wage and Overtime Act" is not partisan, colored, or misleading. *Leigh v. Hall*, 232 Ark. 558, 339 S.W.2d 104 (1960).

Popular name of petition to legalize gambling in named county was not misleading in that it contained partisan coloring, superfluous words designed to so-

licit votes, and conveyed a false idea of the meaning and effect of the proposed act by use of "wagering" instead of "gambling," there being no sound distinction between wagering and betting as forms of gambling. *McDonald v. Bryant*, 238 Ark. 338, 381 S.W.2d 736 (1964).

The popular name is designed to make it easy for voters to discuss the proposal prior to the election by giving them a label to identify it. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

The popular name of a proposed act must be intelligible, honest, and impartial. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

The Supreme Court has declared popular names invalid because they were misleading or used biased language. However, because so little is required of a popular name, the court has never held a proposed measure invalid solely because of an incomplete description of the act by the popular name. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

—Sufficiency.

Popular name sufficient under this amendment. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988); *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

Referendum.

The right of referendum is granted to the people on legislation of every character, whether the legislation affects all or part of the citizens of the municipality affected. *Carpenter v. Paragould*, 198 Ark. 454, 128 S.W.2d 980 (1939).

Only legislative action of the city council, as distinguished from administrative action, is subject to referendum inasmuch as this amendment was not intended to frustrate administrative action essential to efficient administration of a city's affairs. *Lawrence v. Jones*, 228 Ark. 1136, 313 S.W.2d 228 (1958); *Greenlee v. Munn*, 262 Ark. 663, 559 S.W.2d 928 (1978); *City of N. Little Rock v. Gorman*, 264 Ark. 150, 568 S.W.2d 481 (1978).

Where a general act sets out the exclusive procedure for surrendering a town charter, this amendment has no relevance to that procedure. *Simons v. Davis*, 263 Ark. 574, 566 S.W.2d 730 (1978).

The test resorted to in determining whether any bill, law, resolution or ordi-

nance is legislative or administrative is to determine whether the proposition is one that makes new law or executes a law already in existence. *City of N. Little Rock v. Gorman*, 264 Ark. 150, 568 S.W.2d 481 (1978).

This section does not prohibit the voters of a county from using their right to call for a referendum whereby by the people of the county could express their approval or disapproval of the quorum court's action in leasing a county-owned hospital. *Proctor v. Hammons*, 277 Ark. 247, 640 S.W.2d 800 (1982).

Once a petition for referendum bearing the prima facie requisite number of signatures is filed with the Secretary of State, the people's right of referendum commences pursuant to this section; this rule protects the electorate's right of referendum early in a lengthy qualification process. *Walker v. McCuen*, 318 Ark. 508, 886 S.W.2d 577 (1994).

—Amendments.

Once a measure is referred to the people, regardless of whether it contains an emergency clause, any amendments made by the General Assembly during the referendum proceedings are held in abeyance; 1993 amendments passed by the General Assembly after the referendum proceedings began will not be considered when evaluating the sufficiency of the 1994 ballot title of the referred act. *Walker v. McCuen*, 318 Ark. 508, 886 S.W.2d 577 (1994).

—Emergency Clause.

The amendment is self-executing and, although it is within the legislative discretion to determine that an emergency exists, that fact must be stated, as otherwise the act is subject to the operation of the amendment and, 90 days being given from the final adjournment in which to demand or order the referendum thereon, an act cannot take effect until 90 days after such adjournment. *State ex rel. Ark. Tax Comm'n v. Moore*, 103 Ark. 48, 145 S.W. 199 (1912) (decision under prior Constitutional provision).

If a legislative act contains a valid emergency clause, it is effective from and after its passage and remains in force and effect until an adverse vote has been registered by the people in the manner provided by law. *Hanson v. Hodges*, 109 Ark.

479, 160 S.W. 392 (1913) (decision under prior Constitutional provision); *Railey v. Magnolia*, 197 Ark. 1047, 126 S.W.2d 273 (1939); *Fulkerson v. Refunding Bd.*, 201 Ark. 955, 147 S.W.2d 980 (1940).

Prior to the adoption of this amendment, the emergency clause was attached to almost all laws enacted and, to prevent this practice, requirement that facts constituting emergency be stated was inserted in the Constitution. *Gentry v. Harrison*, 194 Ark. 916, 110 S.W.2d 497 (1937).

Cases construing acts containing emergency clauses held insufficient. *Gentry v. Harrison*, 194 Ark. 916, 110 S.W.2d 497 (1937); *Matthews v. Bailey*, 198 Ark. 830, 131 S.W.2d 425 (1939); *Cunningham v. Walker*, 198 Ark. 928, 132 S.W.2d 24 (1939); *Barber v. State*, 206 Ark. 187, 174 S.W.2d 545 (1943); *Marshall v. Singleton*, 282 Ark. 167, 666 S.W.2d 399 (1984).

Though emergency clause was not adopted for the reason that it did not receive the vote of two-thirds of the members of the House, as required by the Constitution, Supreme Court may read the emergency clause in determining the legislative intent in passing the bill. *Missouri Pac. R.R. v. Kincannon*, 203 Ark. 76, 156 S.W.2d 70 (1941).

The fact that everyone may not agree that the facts stated constitute an emergency is not the test of the validity of the emergency clause; the question is whether reasonable people might disagree. *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957).

Emergency clause found sufficient. *DeWitt v. Public Serv. Comm'n*, 248 Ark. 285, 451 S.W.2d 188 (1970).

The courts will not disturb a finding by the General Assembly that a particular fact comprises an emergency if the fact is recited and if fair-minded and intelligent men might reasonably differ as to the sufficiency and truth of the recited fact as a basis for declaring an emergency. *State v. Ziegenbein*, 282 Ark. 162, 666 S.W.2d 698 (1984).

Emergency is defined as some sudden or unexpected happening that creates a need for action. *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995).

Given the arguably archaic and obsolete nature of the Constitution of 1874 and its unsuitableness for piecemeal amendment,

reasonable people might disagree that the facts stated in the emergency clause concerning the need for a new constitution did state an emergency and, therefore, upheld the emergency clause. *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995).

—Vested Rights.

Emergency clause may not be attached if an act creates a vested right or interest, no matter how great the emergency. *Fulkerson v. Refunding Bd.*, 201 Ark. 955, 147 S.W.2d 980 (1940).

Provision of Constitution prohibiting emergency clause in law creating vested rights was not violated by act authorizing issuance of bonds for highway construction purposes if no bonds under act were issued until after holding of special election. *Pickens v. McMath*, 215 Ark. 332, 220 S.W.2d 602 (1949).

Cited: *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1944); *Pafford v. Hall*, 217 Ark. 734, 233 S.W.2d 72 (1950); *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962); *Wenderoth v. City of Ft. Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971); *Dicks v. Naff*, 255 Ark. 357, 500 S.W.2d 350 (1973); *Mason v. Jernigan*, 260 Ark. 385, 540 S.W.2d 851 (1976); *Degler v. Hutto*, 553 F.2d 49 (8th Cir. 1977); *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977); *City of Benton v. Nethercutt*, 264 Ark. 769, 574 S.W.2d 269 (1978); *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983); *Curry v. State*, 279 Ark. 153, 649 S.W.2d 833 (1983); *Clines v. State*, 282 Ark. 541, 669 S.W.2d 883 (1984); *Turner v. Woodruff*, 286 Ark. 66, 689 S.W.2d 527 (1985); *Hanson v. Garland County Election Comm'n*, 289 Ark. 367, 712 S.W.2d 288 (1986); *Cummings v. City of Fayetteville*, 294 Ark. 151, 741 S.W.2d 638 (1987); *Morris v. Torch Club, Inc.*, 295 Ark. 461, 749 S.W.2d 319 (1988); *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 784 S.W.2d 598 (1990); *Plugge v. McCuen*, 310 Ark. 449, 838 S.W.2d 348 (1992); *Porter v. McCuen*, 310 Ark. 562, 839 S.W.2d 512 (1992); *Walmsley v. McCuen*, 318 Ark. 269, 885 S.W.2d 10 (1994); *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 916 S.W.2d 95 (1996); *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997); *Dean v. Williams*, 339 Ark. 439, 6 S.W.3d 89 (1999).

§ 2. House of Representatives.

The House of Representatives shall consist of members to be chosen every second year, by the qualified electors of the several counties.

Cross References. Qualifications of senators and representatives, Ark. Const., Art. 5, § 4. City and county library amendment, Ark. Const., Amend. 72.

CASE NOTES

Changing Date of Election.

The legislature has the power to change the dates of biennial elections and to change the dates of the beginning of terms of office to conform therewith. *Hendricks*

v. Hodges, 122 Ark. 82, 182 S.W. 538 (1916).

Cited: *Smith v. Clinton*, 687 F. Supp. 1310 (E.D. Ark. 1988).

§ 3. Senate.

The Senate shall consist of members to be chosen every four years, by the qualified electors of the several districts. At the first session of the Senate, the Senators shall divide themselves into two classes, by lot, and the first class shall hold their places for two years only, after which all shall be elected for four years.

Cross References. Arkansas term limitation amendment, Ark. Const., Amend. 73.

CASE NOTES

Staggered Terms.

A suit by a voter seeking a declaratory judgment as to whether the senate should be divided into two classes, as provided by this section, was fatally defective when only the five senators from the voter's

senatorial district were named parties defendant, it being necessary under the statute to name all senators as parties defendant. *Block v. Allen*, 241 Ark. 970, 411 S.W.2d 21 (1967).

§ 4. Qualifications of senators and representatives.

No person shall be a Senator or Representative who, at the time of his election, is not a citizen of the United States, nor any one who has not been for two years next preceding his election, a resident of this State, and for one year next preceding his election, a resident of the county or district whence he may be chosen. Senators shall be at least twenty-five years of age, and Representatives at least twenty-one years of age.

Cross References. House of Representatives, Ark. Const., Art. 5, § 2.

RESEARCH REFERENCES

Ark. L. Rev. The Constitutionality of Filing Fees for Political Candidates in Primary Elections: An Arkansas Analysis, 30 Ark. L. Rev. 49.

UALR L.J. Survey of Arkansas Law, Constitutional Law, 1 UALR L.J. 140.

CASE NOTES

ANALYSIS

Constitutionality.

Durational residence requirement.

Constitutionality.

The one-year election district residency requirement imposed by this section on persons seeking election as senator or representative, which corresponds to durational requirements in other state constitutions and the Federal Constitution, is constitutional under both the "reasonable basis" test and the "compelling state interest" test. *Brewster v. Johnson*, 260 Ark. 450, 541 S.W.2d 306 (1976).

Durational Residence Requirement.

A prospective candidate, who had been a student at a university in the district from 1972 through the summer term of 1976, was not a resident of the district for

one year before the date of the election and was therefore not qualified to run as an independent candidate for representative of the district. *Brewster v. Johnson*, 260 Ark. 450, 541 S.W.2d 306 (1976).

A candidate who did not physically reside in a certain district for the one year preceding an election did not satisfy the residency requirement, even though he testified that he thought of the district as his area of residence, worked in the district, had his child educated there, received mail at a post office there, and had other ties to the district. *Jenkins v. Bogard*, 335 Ark. 334, 980 S.W.2d 270 (1998).

This section requires that a candidate reside in the legislative district for one year prior to election, not merely in the county. *Valley v. Bogard*, 342 Ark. 336, 28 S.W.3d 269 (2000).

§ 5. Time of meeting.

The General Assembly shall meet at the seat of government every two years, on the first Tuesday after the second Monday in November, until said time be altered by law.

Publisher's Notes. The time of meeting is now fixed by § 10-2-101 as the

second Monday in January in each odd-numbered year.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law: Public Law, 4 UALR L.J. 243.

CASE NOTES

ANALYSIS

In general.

Extension of session.

In General.

There are only two types of sessions of the General Assembly in Arkansas — the regular biennial sessions provided for in Ark. Const., Art. 5, §§ 5 and 17, and the

sessions which the governor by proclamation convenes under Ark. Const., Art. 6, § 19, which have come to be known as special sessions. *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

Extension of Session.

Although Ark. Const., Art. 5, § 17, provides that the General Assembly can, by a

two-thirds vote, extend a regular session beyond the 60 days, such an extension should only be long enough to allow the General Assembly time to finish its legislative work on the matters pending before it at the regular session. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

A fair reading of the constitution cannot mean that the General Assembly can legally extend a session indefinitely for no valid legislative purpose, nor indefinitely go into a recess so that it may later reconvene itself and conduct its business as though it were in a regular session. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

Where the General Assembly met in January of 1979 and adopted a resolution indefinitely extending its regular biennial session beyond the 60 days, where the

assembly passed a resolution in April which stated that the assembly had completed its essential business and was recessing for 20 months until the next regular session in January of 1981, but that the assembly could reconvene at any time prior to that time, and where the assembly did reconvene in January of 1980 and proposed three amendments to the constitution, two of the three proposed amendments were invalid under Ark. Const., Art. 19, § 22, for not being proposed during a regular session because they were proposed for the first time during the reconvened session; however, the third proposed amendment was valid because it had been considered and worked on during the regular 60-day session in 1979. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

§ 6. Vacancies — Writs of election.

The Governor shall issue writs of election, to fill such vacancies as shall occur in either house of the General Assembly.

CASE NOTES

Cited: *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959).

§ 7. Officers ineligible.

No judge of the Supreme, Circuit or inferior courts of law or equity, Secretary of State, Attorney General for the State, Auditor or Treasurer, Recorder, clerk of any court of record, Sheriff, Coroner, member of Congress, nor any other person holding any lucrative office under the United States or this State (militia officers, justices of the peace, postmasters, officers of public schools and notaries excepted), shall be eligible to a seat in either house of the General Assembly.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

CASE NOTES

Construction.

When this section was read with reference to the eligibility of persons entitled to a seat in the General Assembly and Ark. Const., Art. 5, § 10 was read as a prohi-

bition upon a member after he was seated, there was no apparent conflict between the plain meaning of the two sections. *Williams v. Douglas*, 251 Ark. 555, 473 S.W.2d 896 (1971).

Cited: State ex rel. Gray v. Hodges, 107 Ark. 272, 154 S.W. 506 (1913).

§ 8. Defaulters ineligible.

No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the General Assembly, nor to any office of trust or profit, until he shall have accounted for, and paid over, all sums for which he may have been liable.

CASE NOTES

ANALYSIS

Constitutionality.
Removal from office.

Constitutionality.

Former identical constitutional provision was held not to be in violation of the Constitution of the United States. Taylor v. Governor, 1 Ark. 21 (1837) (decision under prior Constitution).

Removal from Office.

A person elected to office who is disqualified by reason of this section may be ousted on quo warranto or his commission withheld. Swepston v. Barton, 39 Ark. 549 (1882).

§ 9. Persons convicted ineligible.

No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.

RESEARCH REFERENCES

Ark. L. Rev. Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

Wills, Constitutional Crisis: Can the

Governor (or Other State Officeholder) Be Removed from Office in a Court Action after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

CASE NOTES

ANALYSIS

Determination of eligibility.
Expunged felony conviction.
Pardon.
Removal from office.
Reversal of conviction.

Determination of Eligibility.

A plea in abatement filed in an election contest alleging that the contestant had been convicted of embezzlement of federal funds was sufficient defense to the action in view of this section. Irby v. Day, 182 Ark. 595, 32 S.W.2d 157 (1930).

The Senate is the sole judge of its members' eligibility under this section. State ex rel. Evans v. Wheatley, 197 Ark. 997, 125 S.W.2d 101 (1939).

The chairman and secretary of a party's state committee have no right to exclude the name of a candidate who has complied with the prescribed rules because, in their opinion, he is ineligible and could not hold the office, whether that ineligibility arose out of a conviction for a felony or any other cause which would render him ineligible. Irby v. Barrett, 204 Ark. 682, 163 S.W.2d 512 (1942); Ridgeway v. Catlett, 238 Ark. 323, 379 S.W.2d 277 (1964).

Expunged Felony Conviction.

This section does not prohibit a citizen with a "null and void" expunged felony conviction from holding public office in this state. *Powers v. Bryant*, 309 Ark. 568, 832 S.W.2d 232 (1992).

Pardon.

One who has become ineligible to public office by conviction of an infamous crime does not regain his eligibility by a subsequent pardon purporting to restore all civil and political rights which were lost as a result of the conviction. *Ridgeway v. Catlett*, 238 Ark. 323, 379 S.W.2d 277 (1964).

Removal from Office.

A public official becomes subject to removal when convicted by a plea of guilty

or a verdict of guilty, in circuit court, of a crime set forth in this section. *Campbell v. State*, 300 Ark. 570, 781 S.W.2d 14 (1989).

Reversal of Conviction.

Where a city alderman was convicted of crime, another person was elected by the city council to take his place, and the conviction was thereafter reversed, a complaint alleging that plaintiff was entitled to the office of alderman and that the person elected by the city council was usurping that office stated facts sufficient against demurrer. *May v. Edwards*, 258 Ark. 871, 529 S.W.2d 647 (1975).

Cited: *Ridgeway v. State*, 239 Ark. 377, 389 S.W.2d 617 (1965); *May v. Edwards*, 255 Ark. 1041, 505 S.W.2d 13 (1974); *Allen v. State*, 327 Ark. 350, 939 S.W.2d 270 (1997).

§ 10. Members ineligible to civil office.

No Senator or Representative shall, during the term for which he shall have been elected, be appointed or elected to any civil office under this State.

CASE NOTES**ANALYSIS**

In general.

Construction.

Branches of government.

Burial association board employees.

Constitutional convention delegate.

County office.

De facto officer.

Deputy prosecuting attorney.

Elected.

—Re-election.

Municipal office.

School office.

State board.

State commission.

In General.

Neither ex officio status nor nonvoting status will cure the illegality of a legislative appointment to a civil office. *State Bd. of Workforce Educ. v. King*, 336 Ark. 409, 985 S.W.2d 731 (1999).

Construction.

When Ark. Const., Art. 5, § 7, was read with reference to the eligibility of persons entitled to a seat in the general assembly and this section was read as a prohibition upon a member after he was seated, there

was no apparent conflict between the plain meaning of the two sections. *Williams v. Douglas*, 251 Ark. 555, 473 S.W.2d 896 (1971).

Branches of Government.

The phrase "any civil office under this State" in this section refers to an office created by civil law within one of the only three branches of government provided for under the present Constitution of this state. *Harvey v. Ridgeway*, 248 Ark. 35, 450 S.W.2d 281 (1970).

Burial Association Board Employees.

The position of auditor for burial association board was not a civil office within the meaning of this section. *Haynes v. Riales*, 226 Ark. 370, 290 S.W.2d 7 (1956).

Constitutional Convention Delegate.

A senator elected as a delegate to the constitutional convention was not appointed or elected to any civil office under this state within the meaning and prohibition of this section. *Harvey v. Ridgeway*, 248 Ark. 35, 450 S.W.2d 281 (1970).

County Office.

Although incumbent state senator had been defeated in the primary for re-elec-

tion, he was ineligible to serve as a member of the county board of election commissioners. *Jones v. Duckett*, 234 Ark. 990, 356 S.W.2d 5 (1962).

De Facto Officer.

Where circuit judge appointed a special prosecuting attorney who was a member of the General Assembly, and defendant asserted that as a member of the General Assembly such special prosecutor was prohibited from serving because of Ark. Const., Art. 4, §§ 1, 2 and Art. 5, § 10, since a circuit judge had the power to appoint a special prosecuting attorney and since such appointee was a de facto officer, it matters not whether a special prosecuting attorney was considered a civil officer or that he exercised some powers of the judicial branch for, since he was a de facto officer, defendant could not question his authority to act as such. *Owen v. State*, 263 Ark. 493, 565 S.W.2d 607 (1978).

Deputy Prosecuting Attorney.

The deputy prosecuting attorney's office being a state office and he being a state officer, a member of the general assembly is prohibited from being appointed or serving as a deputy prosecuting attorney. *Martindale v. Honey*, 259 Ark. 416, 533 S.W.2d 198 (1976).

Where a member of the House of Representatives had been appointed as a deputy prosecuting attorney and suit was brought challenging that appointment as unconstitutional, such representative would not be required to make an accounting for funds received in his capacity as deputy prosecuting attorney. *Martindale v. Honey*, 261 Ark. 708, 551 S.W.2d 202 (1977).

Elected.

Where lame duck state senator, by virtue of being elected to county chairmanship of his party's county central committee, attained office of county election commissioner, he was elected within this

constitutional prohibition. *Jones v. Duckett*, 234 Ark. 990, 356 S.W.2d 5 (1962).

—Re-Election.

A member of the General Assembly cannot run for re-election to the office of school director. *Williams v. Douglas*, 251 Ark. 555, 473 S.W.2d 896 (1971).

Municipal Office.

Office of municipal judge is a civil office. *Wood v. Miller*, 154 Ark. 318, 242 S.W. 573 (1922).

Representative cannot hold office of mayor. *Collins v. McClendon*, 177 Ark. 44, 5 S.W.2d 734 (1928).

School Office.

The office of school director was a civil office. *Williams v. Douglas*, 251 Ark. 555, 473 S.W.2d 896 (1971).

State Board.

This section clearly precludes a member of the General Assembly from serving as a member of the state board of pardons and paroles or as a member of the board of a state supported college during the term he has been elected to serve as a member of the General Assembly. *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963).

A position on the Board of Workforce Education constitutes an exercise of the sovereign power of the state and, thus, a civil office. *State Bd. of Workforce Educ. v. King*, 336 Ark. 409, 985 S.W.2d 731 (1999).

State Commission.

Statute providing for the appointment of members of the General Assembly to the state sovereignty commission is void. *Smith v. Faubus*, 230 Ark. 831, 327 S.W.2d 562 (1959).

A position on the Capitol Arts and Grounds Commission constitutes an exercise of the sovereign power of the state and, thus, a civil office. *State Bd. of Workforce Educ. v. King*, 336 Ark. 409, 985 S.W.2d 731 (1999).

§ 11. Appointment of officers — Qualifications of members — Quorum.

Each house shall appoint its own officers, and shall be sole judge of the qualifications, returns and elections of its own members. A majority of all the members elected to each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and

compel the attendance of absent members, in such manner and under such penalties as each house shall provide.

CASE NOTES

ANALYSIS

Acceptance after unauthorized appointment.

Determination of eligibility.

—Action against expulsion.

—Qualifications include eligibility.

Acceptance After Unauthorized Appointment.

Where Governor, without authority, appointed member to State Senate, appointee was not a de facto officer and the fact that he was accepted by the Senate did not determine that he had a right to membership. *Matthews v. Bailey*, 198 Ark. 830, 131 S.W.2d 425 (1939).

Determination of Eligibility.

The chairman and secretary of a party's state committee have no right to exclude the name of a candidate for State Senator who has complied with the prescribed rules because, in their opinion, he is ineligible and could not hold the office, whether that ineligibility arose out of a conviction for a felony or any other cause which would render him ineligible. *Irby v. Barrett*, 204 Ark. 682, 163 S.W.2d 512 (1942).

This section gives each house a clear mandate to be the sole judge of the qualifications of its members and the courts have no authority or jurisdiction to question the wisdom of their actions in seating or refusing to seat one elected to membership. *State ex rel. Evans v. Wheatley*, 197 Ark. 997, 125 S.W.2d 101 (1939); *Irby v.*

Barrett, 204 Ark. 682, 163 S.W.2d 512 (1942).

The judicial branch of the state government is without jurisdiction of election contests involving seats in the General Assembly. *Pendergrass v. Sheid*, 241 Ark. 908, 411 S.W.2d 5 (1967).

Circuit court lacked jurisdiction to enjoin the casting of a vote by the legislator notwithstanding that, under *Matthews v. Bailey*, 198 Ark. 830, 131 S.W.2d (1939), such a vote, if both decisive and defective, might have affected the validity of a contested enactment; pursuant to this section, the issue of whether the legislator was required to reside in the district from where he was elected was a matter to be determined by the Arkansas House of Representatives. *Magnus v. Carr*, 350 Ark. 388, 86 S.W.3d 867 (2002).

—Action Against Expulsion.

In an action by senator against his expulsion from Senate the trial court had jurisdiction because it was necessary to determine whether the Senate was lawfully in session as prescribed by the organic law as expressed in the Constitution. *Reaves v. Jones*, 257 Ark. 210, 515 S.W.2d 201 (1974).

—Qualifications Include Eligibility.

The word qualifications in this section was held to include and embrace the word eligibility. *State ex rel. Evans v. Wheatley*, 197 Ark. 997, 125 S.W.2d 101 (1939).

Cited: *Doherty v. Cripps*, 82 Ark. 529, 102 S.W. 394 (1907).

§ 12. Powers and duties of each house.

Each house shall have power to determine the rules of its proceedings; and punish its members, or other persons, for contempt or disorderly behavior in its presence; enforce obedience to its process; to protect its members against violence or offers of bribes, or private solicitations; and, with the concurrence of two-thirds, expel a member; but not a second time for the same cause. A member expelled for corruption shall not, thereafter, be eligible to either house; and punishment for contempt, or disorderly behavior, shall not bar an indictment for the same offense. Each house shall keep a journal of its proceedings; and, from time to time, publish the same, except such parts as require

secrecy; and the yeas and nays, on any question, shall, at the desire of any five members, be entered on the journals.

Cross References. Manuscripts of daily proceedings — Journals, § 10-2-108.

CASE NOTES

ANALYSIS

Directory legislation.

Expelling member.

Journal.

Powers and duties.

Rules of procedure.

Directory Legislation.

Statute does not place limits on the legislature nor control its power to vote on matters which would have a financial impact on counties and municipalities which directs the manner in which that power is to be exercised by requiring that a fiscal impact statement be filed with the chairman of each committee and clerk of each house before a vote is taken. *County of Howard v. Rotenberry*, 286 Ark. 29, 688 S.W.2d 937 (1985).

Expelling Member.

The failure to give notice to senator, of proceedings at which senate expelled the senator, did not violate due process since the senator's right to hold office was not a property right. *Reaves v. Jones*, 257 Ark. 210, 515 S.W.2d 201 (1974).

Where the proceedings prior to senate recess did not expel the senator and the subsequent vote after the recess was the first expulsion, the prior proceedings were not a bar to the subsequent effort to expel the senator. *Reaves v. Jones*, 257 Ark. 210, 515 S.W.2d 201 (1974).

Journal.

The journals of the General Assembly and records and files of the office of the secretary of state may be consulted by the Supreme Court in cases of doubt as to the passage of a law. *Burr & Co. v. Ross & Leitch*, 19 Ark. 250 (1857); *Vinsant v. Knox*, 27 Ark. 266 (1871); *English v. Oliver*, 28 Ark. 317 (1873); *State v. Little Rock, M.R. & T.R.R.*, 31 Ark. 701 (1877); *Worthen v. Badgett*, 32 Ark. 496 (1877); *Smithee v. Garth*, 33 Ark. 17 (1878); *Chicot County v. Davies*, 40 Ark. 200

(1882); *State v. Bowman*, 90 Ark. 174, 118 S.W. 711 (1909); *Niven v. Road Imp. Dist. No. 14*, 132 Ark. 240, 200 S.W. 997 (1918).

A register which records the progress of bills through the General Assembly until their transmission to the Governor is not synonymous with the journal as required by the Constitution. *Whaley v. Independence County*, 212 Ark. 320, 205 S.W.2d 861 (1947).

Powers and Duties.

The language of this section is broad enough that the power of the legislature to make appointments is not confined to officers necessary to the discharge of legislative duties. *Cox v. State*, 72 Ark. 94, 78 S.W. 756 (1904).

Rules of Procedure.

The observance of rules adopted by the General Assembly for the conduct of its business is a matter entirely within its control and discretion and not subject to be reviewed by the courts. *Saint Louis & S.F.R.R. v. Gill*, 54 Ark. 101, 15 S.W. 18 (1891), *aff'd*, 156 U.S. 649, 15 S. Ct. 484, 39 L. Ed. 567, *aff'd*, 156 U.S. 667, 15 S. Ct. 484, 39 L. Ed. 573 (1895); *State v. Corbett*, 61 Ark. 226, 32 S.W. 686 (1895); *Monroe v. Green*, 71 Ark. 527, 76 S.W. 199 (1903).

When an enrolled statute is signed by the Governor and deposited with the Secretary of State it raises the presumption that every requirement has been complied with, and this presumption is conclusive unless there is a record from which the court can take judicial knowledge of the contrary. *Whaley v. Independence County*, 212 Ark. 320, 205 S.W.2d 861 (1947).

The rule adopted by the house concurrent resolution providing both houses recess and reconvening period, and including notice requirements to members of each house, was a matter of internal rule-making and could be changed at will. *Reaves v. Jones*, 257 Ark. 210, 515 S.W.2d 201 (1974).

§ 13. Sessions to be open.

The sessions of each house, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

§ 14. Election of officers by General Assembly.

Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the General Assembly, the vote shall be taken viva voce, and entered on the journals.

Cross References. Viva voce vote, elections by persons acting as representatives, Ark. Const., Art. 3, § 12.

§ 15. Privileges of members.

The members of the General Assembly shall, in all cases except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses; and, in going to and returning from the same; and, for any speech or debate in either house, they shall not be questioned in any other place.

RESEARCH REFERENCES

Ark. L. Rev. Note, The Law of Defamation: An Arkansas Primer, 42 Ark. L. Rev. 915.

CASE NOTES

Cited: Dawson v. Gerritsen, 290 Ark. 499, 720 S.W.2d 714 (1986).

§ 16. Per diem and mileage of General Assembly.

Each member of the General Assembly shall receive six dollars per day for his services during the first sixty days of any regular session of the General Assembly, and if any regular session shall be extended, such member shall serve without further per diem. Each member of the General Assembly shall also receive ten cents per mile for each mile traveled in going to and returning from the seat of government, over the most direct and practicable route. When convened in extraordinary session by the Governor, they shall each receive three dollars per day for their services during the first fifteen days, and if such extraordinary

session shall extend beyond fifteen days, they shall receive no further per diem. They shall be entitled to the same mileage for any extraordinary session as herein provided for regular sessions. The terms of all members of the General Assembly shall begin on the day of their election, and they shall receive no compensation, perquisite or allowance whatever, except as herein provided. [As amended by Const. Amend. 5.]

Publisher's Notes. Compensation of General Assembly members is now governed by Ark. Const. Amend. 70, § 1; commencement of terms is governed by Ark. Const., Art. 8, § 6, as amended. See *Berry v. Gordon*, 237 Ark. 547 and 865, 376 S.W.2d 279 (1964) and *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967), for discussion of implied repeal of this provision by subsequent amendments.

Prior to its amendment, this section read: "The members of the General As-

sembly shall receive such per diem pay and mileage for their services as shall be fixed by law. No member of either house shall, during the term for which he has been elected, receive any increase of pay for his services under any law passed during such term. The term of all members of the General Assembly shall begin on the day of their election."

An amendment adopted in 1902 (see Acts 1901, p. 412) deleted the words "per diem."

CASE NOTES

ANALYSIS

Holdover committee.
Repeal.

Holdover Committee.

Holdover committee is entitled to pay for necessary work after adjournment. *Russell v. Cone*, 168 Ark. 989, 272 S.W. 678 (1925).

Repeal.

Paragraph 3 of Ark. Const. Amend. 15 repealed this provision, except for the be-

ginning date of members of the General Assembly which was repealed by Ark. Const. Amend. 23, § 6. The subject matter was then covered by Ark. Const. Amend. 48 (repealed — now see Ark. Const. Amend. 56, § 3). *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964); *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

§ 17. Duration of sessions.

The regular biennial sessions, shall not exceed sixty days in duration; unless by a vote of two-thirds of the members elected to each house of said General Assembly. Provided, that this section shall not apply to the first session of the General Assembly under this Constitution, or when impeachments are pending.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law:
Public Law, 4 UALR L.J. 243.

CASE NOTES

ANALYSIS

In general.
 Extended sessions.
 Per diem.

In General.

There are only two types of sessions of the General Assembly — the regular biennial sessions provided by Ark. Const., Art. 5, §§ 5 and 17, and the sessions which the Governor by proclamation convenes under Ark. Const., Art. 6, § 19, which have come to be known as special sessions. *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

Extended Sessions.

A concurrent resolution which has for its sole object the continuance of a session under this provision does not require the approval of the Governor. *Trammell v. Bradley*, 37 Ark. 374 (1881); *Tipton v. Parker*, 71 Ark. 193, 74 S.W. 298 (1903).

A regular session of the General Assembly may exceed sixty days by a vote of two-thirds of the members elected to each house. *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

There is no limitation upon the legislative power to extend the session by a two-thirds vote and no specification of a time beyond which, in the discretion of the General Assembly, exercised by the vote of two-thirds of the members of both houses,

the session may not be extended, and the determination of the date for termination of an extended session is a matter of legislative discretion. *Wells v. Purcell*, 267 Ark. 456, 592 S.W.2d 100 (1979).

The General Assembly cannot legally extend a session indefinitely for no valid legislative purpose, nor indefinitely go into a recess so that it may later reconvene itself and conduct its business as though it were in a regular session. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

The Uniform Rules of Evidence (Acts 1975 (Extended Sess., 1976), No. 1143, § 1, p. 2799) were not validly adopted by the Legislature because, at the time of their adoption, the Legislature was unlawfully in session in January, 1976, almost a year after the 1975 regular session had ended; therefore, they did not become law. *Ricarte v. State*, 290 Ark. 100, 717 S.W.2d 488 (1986) (decision prior to adoption of Uniform Rules of Evidence by Supreme Court).

Per Diem.

The per diem payment is applicable to both the first sixty days and for the period during which the regular session was extended in accordance with this section and statute so providing was constitutional. *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

§ 18. Presiding officers.

Each house, at the beginning of every regular session of the General Assembly, and whenever a vacancy may occur, shall elect from its members a presiding officer, to be styled, respectively, the President of the Senate, and the Speaker of the House of Representatives; and whenever, at the close of any session, it may appear that the term of the member elected President of the Senate will expire before the next regular session, the Senate shall elect another President from those members whose terms of office continue over, who shall qualify and remain President of the Senate until his successor may be elected and qualified; and who, in the case of a vacancy in the office of Governor, shall perform the duties and exercise the powers of Governor as elsewhere herein provided.

Publisher's Notes. See Const., Amend. 6, § 5, under which the Lieutenant Governor serves as President of the Senate.

CASE NOTES

Assumption of Duties.

At noon on day of adjournment, the newly elected President of the Senate assumes the duties of that office. *Powell v.*

Hayes, 83 Ark. 448, 104 S.W. 177 (1907); *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913); *Hodges v. Keel*, 108 Ark. 184, 159 S.W. 21 (1913).

§ 19. Style of laws — Enacting clause.

The style of the laws of the State of Arkansas shall be: "Be it enacted by the General Assembly of the State of Arkansas."

CASE NOTES

ANALYSIS

In general.

Initiative and referendum.

Joint resolution.

Title.

In General.

The enacting clause is essential to the validity of an act. *Vinsant v. Knox*, 27 Ark. 266 (1871); *Palmer v. State*, 137 Ark. 160, 208 S.W. 436 (1919).

Initiative and Referendum.

A statute is not void because it has the enacting clause set out in this section and also the one provided in the initiative and referendum amendment; the inappropriate one will be disregarded. *Jackson v. State*, 101 Ark. 473, 142 S.W. 1153 (1912).

The enacting clause provided in the initiative and referendum amendment is a substantial compliance with the section. *Adcock v. Coker*, 105 Ark. 210, 151 S.W.

253 (1912); *King v. McDowell*, 107 Ark. 381, 155 S.W. 501 (1913).

This section is not repealed by the initiative and referendum amendment, which provides that the style of initiated bills shall be, "Be it enacted by the People of the State of Arkansas." *Ferrell v. Keel*, 105 Ark. 380, 151 S.W. 269 (1912).

Joint Resolution.

Joint resolutions are not in the style of laws and can not have the full force and effect of law. *Dickinson v. Johnson*, 117 Ark. 582, 176 S.W. 116 (1915).

Title.

Although the Constitution does no more than require an enacting clause, the affixing of a title is customary in American legislation. The title forms no part of the enactment but may be considered when the court is in doubt as to the legislative intent. *Laprairie v. City of Hot Springs*, 124 Ark. 346, 187 S.W. 442 (1916).

§ 20. State not made defendant.

The State of Arkansas shall never be made defendant in any of her courts.

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Prohibition.

In General.

This section is not merely declaratory that the state may not be sued without her consent but expressly forbids all suits against the state. *Pitcock v. State*, 91 Ark. 527, 121 S.W. 742 (1909).

Any suit, whether in law or in equity, which has for its purpose and effect, directly or indirectly, of coercing the state is one against the state. *Watson v. Dodge*, 187 Ark. 1055, 63 S.W.2d 993 (1933).

The question of whether a particular lawsuit is one against the state need not be determined solely by reference to the nominal parties to the record and the mere fact that the State is not named as a

party defendant does not conclusively establish that the suit is not within the rule prohibiting suits against a sovereign without its consent. *Ralls v. Mittlesteadt*, 268 Ark. 741, 596 S.W.2d 349 (Ct. App. 1980).

This section prohibits awards of damages in lawsuits against the State of Arkansas and its institutions. *Smith v. Denton*, 320 Ark. 253, 895 S.W.2d 550 (1995).

The concept of sovereign immunity is well grounded in Arkansas law. *Milligan v. Burrow*, 52 Ark. App. 20, 914 S.W.2d 763 (1996).

The grant of immunity contained in § 21-9-301 is not as comprehensive as the constitutional prohibition established by this section; specifically, the immunity granted by statute for tortious conduct is limited to any recovery in excess of insurance coverage, whereas the constitutional prohibition against bringing an action against the state is far-reaching and applies to all circumstances where the state's treasury could be tapped for the payment of damages. *Dermott Special Sch. Dist. v. Johnson*, 343 Ark. 90, 32 S.W.3d 477 (2000).

Actions Proper.

Claims for violations of the Fair Labor Standards Act (29 U.S.C. §§ 201-219) may be brought against the state, but must be pursued in state court rather than federal court. *Jacoby v. Arkansas Dep't of Educ.*, 331 Ark. 508, 962 S.W.2d 773 (1998).

—Child Support Enforcement.

The State did not waive its sovereign immunity defense when it brought the paternity and child-support actions against the father through the state Office of Child Support Enforcement. *State Office of Child Support Enforcement v. Mitchell*, 330 Ark. 338, 954 S.W.2d 907 (1997).

—Claims Against State.

Through the enactment of provisions establishing the State Claims Commission, the legislature created a method by which claims alleged to be just and legal

debts of the state could be filed, processed, and reviewed by the General Assembly while preserving the state's sovereign immunity. *Fireman's Ins. Co. v. Arkansas State Claims Comm'n*, 301 Ark. 451, 784 S.W.2d 771 (1990), cert. denied, 498 U.S. 824, 111 S. Ct. 76, 112 L. Ed. 2d 50 (1990).

—Class Actions.

In action by taxpayers for refunds from the state, chancellor lacked authority to certify as members of class taxpayers who had not filed refund claims because sovereign immunity was waived only for plaintiffs who had followed the procedure outlined in § 26-18-507 and applied for refunds. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

—Counterclaim Against State.

In condemnation proceedings, an instruction that a tenant was entitled to just compensation for damages to his crops on land adjoining land taken by the Highway Commission, such land being farmed as a single operation, did not allow the jury to consider elements of damages amounting to a counterclaim against the state prohibited by this section. *Arkansas State Hwy. Comm'n v. Steed*, 241 Ark. 950, 411 S.W.2d 17 (1967).

The trial court erred in entering judgment over against the state for the amount by which appellee's counterclaim exceeded the state's claim in an action by the state for rent due on farm land. *Arkansas Dep't of Cors. ex rel. Hutto v. Doyle*, 254 Ark. 102, 491 S.W.2d 602 (1973).

In action brought by the university medical center and collection service to recover hospital debt, affirmative defense of the unauthorized practice of law by the collection service did not constitute a counterclaim against the state in violation of this section. *Davis v. University of Ark. Medical Ctr. & Collection Serv., Inc.*, 262 Ark. 587, 559 S.W.2d 159 (1977).

—Declaratory Judgments.

A suit against the Commission on Judicial Discipline and Disability seeking only a declaration whether the Commission, acting through its Director, has acted in violation of Rule of Procedure of the Arkansas Judicial Discipline and Disability Commission is not barred by the sovereign immunity provision of this section. *Commission on Judicial Discipline & Disabil-*

ity v. Digby, 303 Ark. 24, 792 S.W.2d 594 (1990).

—Eminent Domain.

The trial court in an eminent domain proceeding did not err in allowing contract purchasers of a portion of the property to intervene in the action, and the granting of the intervention did not amount to a suit against the state in violation of this section. *Arkansas State Hwy. Comm'n v. Wilkinson*, 12 Ark. App. 28, 670 S.W.2d 462 (1984).

A landowner's due process and equal protection claims are satisfied under Arkansas law since the landowner, claiming a taking of property, may either seek prospective injunctive relief in chancery court or damages from the State Claims Commission. *Austin v. Arkansas State Hwy. Comm'n*, 320 Ark. 292, 895 S.W.2d 941 (1995).

—State Highway Commission.

This section is not violated by permitting remaindermen not named in a condemnation suit by the State Highway Commission to intervene as parties defendant to assert their interest in the lands to be condemned. *Arkansas State Hwy. Comm'n v. Roberts*, 248 Ark. 1005, 455 S.W.2d 125 (1970).

It was error to sustain Highway Commission's demurrer to response by landowners, in condemnation proceeding brought by county, asking that commission be required to pay any damages sustained after judicial determination of the amount due for any sum which the landowners were unable to collect from the county, since landowners were not seeking a judgment against the commission and therefore were not affected by provision forbidding suits against the state. *Shipley v. Crawford County*, 253 Ark. 1021, 490 S.W.2d 439 (1973).

—Intervention by State.

An ejectment suit brought against parties who did not defend, but in which the state intervened claiming the lands had escheated to the state, was not a suit against the state. *King v. Harris*, 134 Ark. 337, 203 S.W. 847 (1918).

—Medical Malpractice.

The defendant physician was not entitled to summary judgment in a medical malpractice action, notwithstanding that

she was an uninsured contract employee who supervised family-practice residents for the state, where there was evidence that the physician had been selected through the plaintiff's health-insurance carrier as the decedent's private obstetrician and that she was not initially contacted by a resident, per her state obligation, but by a nurse. *Aka v. Jefferson Hosp. Ass'n*, 344 Ark. 627, 42 S.W.3d 508 (2001).

—Recoupment.

While the state can not be sued, a claim against the state may be pleaded by way of recoupment. *State ex rel. Att'y Gen. v. Lovett-Carnahan Co.*, 179 Ark. 43, 14 S.W.2d 233 (1929).

—School Districts.

School districts, as political subdivisions, are not entitled to the state's constitutional sovereign-immunity protection. *Dermott Special Sch. Dist. v. Johnson*, 343 Ark. 90, 32 S.W.3d 477 (2000).

—State Agencies.

Where the Arkansas State Game and Fish Commission voluntarily appeared as defendant in a suit by a tax title claimant to quiet title to land claimed by the commission, it was bound by the decree in such action. *Arkansas Game & Fish Comm'n v. Parker*, 248 Ark. 526, 453 S.W.2d 30 (1970).

The Arkansas State Game and Fish Commission was not protected against suit or injunction under the state constitution if acting in bad faith regulating fish population in state-owned lakes. *Arkansas State Game & Fish Comm'n v. Ewbank*, 256 Ark. 930, 512 S.W.2d 540 (1974).

The Arkansas Public Defender Commission was protected where it did nothing to waive its grant of sovereign immunity, and the trial court abused its discretion by requiring the Commission to pay the minors' attorney fees, so that a writ of certiorari was necessary to protect the sovereign immunity of the Commission. *Arkansas Pub. Defender Comm'n v. Burnett*, 340 Ark. 233, 12 S.W.3d 191 (2000).

—Administrative Review.

Certiorari to review proceedings of agency was not a suit against state. *Hall v.*

Bledsoe, 126 Ark. 125, 189 S.W. 1041 (1916).

—State Employees.

Where a motorist brought an action against some state employees to recover for damages sustained in a highway collision with a dump truck which the state employees had backed out onto the highway, such an action was not a suit against the state and it could be maintained in a circuit court. *Ralls v. Mittlesteadt*, 268 Ark. 741, 596 S.W.2d 349 (Ct. App. 1980).

—State Troopers.

A negligence action for personal injuries brought against a state trooper for a violation of duty imposed upon him by law in common with all other people using the highways does not amount to an action against the state. *Kelly v. State*, 265 Ark. 337, 578 S.W.2d 566 (1979); *Grimmett v. Digby*, 267 Ark. 192, 589 S.W.2d 579 (1979).

—State Officers.

Suit against state officers is not suit against state. *McConnell v. Arkansas Brick & Mfg. Co.*, 70 Ark. 568, 69 S.W. 559 (1902).

Where unemployment compensation tax payments were made under protest under an understanding that the validity of the assessment would be contested and a written agreement was entered stipulating that suit would be brought and money refunded if the assessment was found invalid, money never became a part of the funds of the state, but it was held by commissioner of labor as trustee or escrow agent, and suit for recovery was not a suit against the state. *McCain v. Crossett Lumber Co.*, 206 Ark. 51, 174 S.W.2d 114 (1943).

Complaint to enjoin administrative officials from enforcing allegedly void orders was not a suit against the state. *Federal Compress & Whse. Co. v. Call*, 221 Ark. 537, 254 S.W.2d 319 (1953).

The Commissioner of Revenues could not avail himself of sovereign immunity with respect to taxpayers' suit challenging tax exemptions for government employees since the suit was not against the state of Arkansas. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Officers of state agencies may be enjoined from acts which are ultra vires, in bad faith, or arbitrary; thus, the chancel-

lor's finding that he had jurisdiction to enjoin the action of the University of Arkansas Trustees in delaying fulfilling the terms of a charitable trust was consistent with precedence. *Cammack v. Chalmers*, 284 Ark. 161, 680 S.W.2d 689 (1984).

—Statutory Provisions.

Statute which authorizes a state subdivision to purchase insurance protection to compensate anyone who might suffer damages through the negligence of the subdivision or its servants, acting in the scope of their employment, and which allows an injured party to bring suit against the insurance carrier, is valid and enforceable. *Aetna Cas. & Sur. Co. v. Brashears*, 226 Ark. 1017, 297 S.W.2d 662 (1956).

Landowner may properly claim compensation in a petition for mandatory injunction brought under statutory provisions allowing compensation for cleaning up junkyards along highway. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

—Municipalities.

The legislature has the power to authorize a suit against a municipality. If the municipality has the power to mortgage its property, it is subject to foreclosure on the breach of the condition. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960).

This section does not bar suit against a city, even where the city is acting as agent for the state, if there is a statute making it liable. *Deason v. Rogers*, 247 Ark. 1061, 449 S.W.2d 410 (1970).

—Taxpayer Actions.

This section conflicts with the more specific provision granting taxpayer standing (Ark. Const., Art. 16, § 13); since that provision implies a right to sue which would be rendered meaningless if this section controlled, the well-known rule of construction holding that the more specific controls the general must be employed. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Section 26-18-507(e)(2)(A) provides a waiver of immunity for a taxpayer seeking relief for improperly collected sales tax. *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Consent.

There is no authority in law to waive state's immunity to suit and state is not

bound in respect thereto by unauthorized acts of its agents or erroneous construction of law by its representatives. *Pitcock v. State*, 91 Ark. 527, 121 S.W. 742 (1909); *Arkansas State Hwy. Comm'n v. Lasley*, 239 Ark. 538, 390 S.W.2d 443 (1965).

The state, by virtue of its sovereignty, may become a suitor in its own courts and, when it has done so, it has the same rights and is subject to like restriction as a private suitor and must submit to and abide by the results. *Arkansas State Hwy. Comm'n v. Partain*, 193 Ark. 803, 103 S.W.2d 53 (1937); *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

This section does not prohibit the state from waiving immunity or voluntarily entering its appearance. *Arkansas Game & Fish Comm'n v. Lindsey*, 299 Ark. 249, 771 S.W.2d 769 (1989).

Having entered its appearance in the county court proceeding, the Fish and Game Commission could not subsequently claim sovereign immunity. *Arkansas Game & Fish Comm'n v. Lindsey*, 299 Ark. 249, 771 S.W.2d 769 (1989).

Regardless of any benefit derived by the state and the representations by counsel for the state, the sovereign-immunity clause applied to bar any recovery for attorneys' fees in an action by a school district pertaining to the disparity in funds available for education in school districts across the state under the school funding system; however, when the state signed off on two published notices to class members advocating that attorneys' fees be paid and continued to push for payment of attorneys' fees even after the chancery court refused to sign an agreed order, it waived its sovereign-immunity defense to payment of those fees. *Lake View Sch. Dist. No. 25 v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (2000).

Enforcement of Judgments.

Section 19-4-1614 provides nothing more than a means for the payment of certain judgments against the State, and does not create a waiver of the State's immunity from suit in her own courts. *Cross v. Arkansas Livestock & Poultry Comm'n*, 328 Ark. 255, 943 S.W.2d 230 (1997).

Entitlement.

An education service cooperative created pursuant to §§ 6-13-1000 to 1025 is

not entitled to sovereign immunity. *Ozarks Unlimited Resources Coop. v. Daniels*, 333 Ark. 214, 969 S.W.2d 169 (1998).

Improper Actions.

Where judgment of reversal provided that appellant recover all costs of appeal of a conviction for violations of the liquor laws, appellant is not entitled to a writ of execution against the state for the collection of such costs, for such a proceeding would amount to a suit against the state which the Constitution prohibits. *Powell v. State*, 233 Ark. 438, 345 S.W.2d 8 (1961).

Sovereign immunity precluded any quantum meruit action by Real Estate Commission employees for benefits on 1964 pension plan believed to have been authorized. *Parker v. Arkansas Real Estate Comm'n*, 256 Ark. 149, 506 S.W.2d 125 (1974).

Where a suit is brought against an officer or agency with relation to some matter in which defendant represents the state in action and liability, the state, while not a party of record, is the real party against which relief is sought so that a judgment for plaintiff, though nominally against the defendant as an individual or entity distinct from the state, will operate to control the action of the state or subject it to liability, the suit is in effect a suit against the state and cannot be maintained without state consent. *Ralls v. Mittlesteadt*, 268 Ark. 741, 596 S.W.2d 349 (Ct. App. 1980).

Medical malpractice claim against the University of Arkansas for Medical Sciences (UAMS) was dismissed, pursuant to an interlocutory appeal, because, as a department of the University of Arkansas, the UAMS was not an entity that could be sued; the doctrine of sovereign immunity barred a claim against the University of Arkansas and its Board of Trustees because a finding for the patient against the UAMS would necessarily subject the State of Arkansas to financial liability, and sovereign immunity barred such an action unless it had been waived. *Univ. of Ark. for Med. Scis. v. Adams*, — Ark. —, 117 S.W.3d 588, 2003 Ark. LEXIS 428 (2003).

—Civil Rights.

The court properly dismissed allegations that the defendant board violated

the Civil Rights Act where the plaintiff named the board itself as the defendant rather than naming any of the board members in their official or individual capacities. *Brown v. Arkansas State Heating, Ventilation, Air Conditioning & Refrigeration Licensing Bd.*, 336 Ark. 34, 984 S.W.2d 402 (1999).

Inmate's claims against prison officials in their official capacities for civil rights violations related to grooming and food policies were constitutionally barred as the inmate's request for relief, if granted, would have subjected the department of corrections, an immune state agency, to liability. *Fegans v. Norris*, 351 Ark. 200, 89 S.W.3d 919 (2002).

—Contract Performance.

A suit cannot be maintained to compel the state to perform its contract specifically. *Caldwell v. Donaghey*, 108 Ark. 60, 156 S.W. 839 (1913).

An action by university employees was barred by the doctrine of sovereign immunity where the employees sought a declaratory judgment that the university had contractually obligated itself to provide a lifetime health-insurance benefit to those retirees meeting the specific criteria at no cost to the retirees and that the benefit was an essential term of the parties' employment agreement, but failed to properly plead facts sufficient to state a claim based on an unconstitutional impairment or deprivation of a vested property right. *Arkansas Tech. Univ. v. Link*, 341 Ark. 495, 17 S.W.3d 809 (2000).

—Eminent Domain.

Suit will not lie to condemn right of way across state's farm for levee purposes. *Linwood & Auburn Levee Dist. v. State*, 121 Ark. 489, 181 S.W. 892 (1915).

Intervention in condemnation proceedings by property owners alleging that their property had been damaged was, in effect, a suit against the state prohibited by this section. *Arkansas State Hwy. Comm'n v. Bush*, 195 Ark. 920, 114 S.W. 1061 (1938).

—State Agencies.

A suit against the penitentiary board to reform a contract for the purchase of a convict farm is, in effect, one against the state. *Jobe v. Urquhart*, 98 Ark. 525, 136 S.W. 663 (1911).

A suit against the board of trustees of

the state agricultural school to recover fixtures installed in the school under a contract signed by the president of the board is a suit against the state. *Allen Eng'g Co. v. Kays*, 106 Ark. 174, 152 S.W. 992 (1913).

Although no one has filed a lawsuit against the Department of Human Services seeking costs and restitution, the court has imposed, under statutory authority, costs and restitutionary awards against the state agency in connection with delinquency proceedings in which the agency acted as a custodian of a juvenile; because the State will no doubt be coerced to bear the financial obligation to pay costs and restitution if the orders are upheld, the suit is one against the State for determining whether sovereign immunity applies. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

The appearance of the Department of Human Services (DHS) subsequent to complaints being filed against juveniles, pursuant to DHS' obligation to obtain custody of the juveniles in dependency-neglect proceedings and appear in delinquency proceedings, is not a voluntary waiver of sovereign immunity because DHS is under an obligation to appear. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

A claim seeking injunctive relief against the University of Arkansas to restrain it from enforcing its policy limiting doctoral pursuit to seven years was a legal claim against the state and, therefore, was barred. *Grine v. Board of Trustees*, 338 Ark. 791, 2 S.W.3d 54 (1999).

Suit against community college was a suit against the state, prohibited by sovereign immunity, because, even though the college received funding from sources other than the state from which it could have paid any judgment, if it had done so any shortfall in the budget from which those funds were taken would have been made up by state funds. *Short v. Westark Cmty. College*, 347 Ark. 497, 65 S.W.3d 440 (2002).

Finding that the surety's declaratory judgment action against the State Highway Commission and the State Highway and Transportation Department was barred was proper where it was barred by the doctrine of sovereign immunity; the surety was seeking to control the action of

the state and a ruling on the surety's liability on the performance bond would have determined whether the state could seek damages based upon a breach of the performance bond. *Travelers Cas. & Sur. Co. of Am. v. Ark. State Highway Comm'n*, 353 Ark. 721, 120 S.W.3d 50 (2003).

—Garnishment.

In an action for personal injuries by an employee against a highway contractor, no right exists to garnishee money due the contractor from the State Highway Commission, and this exemption of the commission from garnishment may not be waived. *Bull v. Ziegler*, 186 Ark. 477, 54 S.W.2d 283 (1932).

Section 9-14-102, which provides for wage assignments and deductions for child support, merely provides a means by which the payment of child support can be more effectively enforced; it is not a waiver of sovereign immunity. *Department of Human Servs. v. Crunkleton*, 303 Ark. 21, 791 S.W.2d 704 (1990).

—Highway Commission.

A suit by a rate expert against the Highway Commission and the State Treasurer to recover for services performed in securing reduction in freight rates on road-building materials and to restrain the treasurer from disbursing funds received from the federal government in aid of certain projects, there being no authority for the employment of a rate expert and no appropriation for his services, was held in effect a suit against the state and unauthorized. *Arkansas Hwy. Comm'n v. Dodge*, 190 Ark. 131, 77 S.W.2d 981 (1935).

The State Highway Commission cannot be sued, and this immunity cannot be waived even by the legislature. *Arkansas State Hwy. Comm'n v. Nelson Bros.*, 191 Ark. 629, 87 S.W.2d 394 (1935), overruling *Grable v. Blackwood*, 180 Ark. 311, 22 S.W.2d 41 (1929); *Arkansas State Hwy. Comm'n v. Dodge*, 181 Ark. 539, 26 S.W.2d 879 (1930); *Baer v. Arkansas State Hwy. Comm'n*, 185 Ark. 590, 48 S.W.2d 842 (1932); and *Arkansas State Hwy. Comm'n v. Dodge*, 186 Ark. 640, 55 S.W.2d 71 (1932), insofar as the last mentioned case tends to support the doctrine of the cases overruled; *Federal Land Bank v. Arkansas State Hwy. Comm'n*, 194 Ark. 616, 108 S.W.2d 1077 (1937); *Bryant v. Arkansas*

State Hwy. Comm'n, 233 Ark. 41, 342 S.W.2d 415 (1961); *Roesler v. Denton*, 239 Ark. 462, 390 S.W.2d 98 (1965); *Arkansas State Hwy. Comm'n v. Lasley*, 239 Ark. 538, 390 S.W.2d 443 (1965); *Arkansas State Hwy. Comm'n v. Cunningham*, 239 Ark. 890, 395 S.W.2d 13 (1965); *Arkansas State Hwy. Comm'n v. Flake*, 254 Ark. 624, 495 S.W.2d 855 (1973); *Tri-B Adv., Inc. v. Arkansas State Hwy. Comm'n*, 260 Ark. 227, 539 S.W.2d 430 (1976); *Solomon v. Valco, Inc.*, 288 Ark. 106, 702 S.W.2d 6 (1986).

When damages result from unlawful, improper, or negligent construction of a highway, the owner of condemned property has no remedy at law but must rely upon a claim before the State Claims Commission. *Arkansas State Hwy. Comm'n v. Choate*, 256 Ark. 45, 505 S.W.2d 731 (1974).

Where the landowners sat idly by for two and one-half years and watched construction of highway across their property without taking steps to protect their rights, until contractors undertook the very last part of the construction necessary to complete the job, the injunctive relief was barred. *Arkansas State Hwy. Comm'n v. Rice*, 259 Ark. 190, 532 S.W.2d 727 (1976).

—State Officers.

A suit against the Commissioner of Revenues, which is in effect a suit against the state, is not maintainable in the courts of the state without the consent of the legislature. *Watson v. Dodge*, 187 Ark. 1055, 63 S.W.2d 993 (1933).

The fact that a state officer instead of the state is designated as the party defendant does not foreclose question as to whether the suit is in effect one against the state, for if the state is in fact the real party in interest the suit falls within this constitutional prohibition. *McCain v. Crossett Lumber Co.*, 206 Ark. 51, 174 S.W.2d 114 (1943).

Suit by state officer to restrain board of trustees of state university from working women employed by university in violation of state wage and hour laws was one against state and, as such, could not be maintained. *State v. University of Ark. Bd. of Trustees*, 241 Ark. 399, 407 S.W.2d 916 (1966).

Where assignee of defaulting contractor sought indemnity in a cross-complaint

against various state officials and the state sought no recovery from assignee and none was allowed, the claim for indemnity, although asserted against state officials, was in reality a claim for a money judgment against the state and, as such, it constituted a suit against the state which was barred by this section. *Equilease Corp. v. United States Fid. & Guar. Co.*, 262 Ark. 689, 565 S.W.2d 125 (1978).

Despite trial court's finding that the state board of education had distributed money out of the Mutual Foundation Program Aid (MFPA) fund without following the statutory formula for the distribution of these funds and the court's issuance of an injunction to prevent further misdirection of the funds, the court was without authority to order the state treasurer to refund the money expended from MFPA funds as that would be tantamount to an action against the state. *Magnolia Sch. Dist. No. 14 v. Arkansas State Bd. of Educ.*, 303 Ark. 666, 799 S.W.2d 791 (1990).

If officers and employees of the State of Arkansas act without malice and within the scope of their employment, they are immune from an award of damages in litigation. *Smith v. Denton*, 320 Ark. 253, 895 S.W.2d 550 (1995).

Suit against state employees for acts performed in their official capacities was tantamount to an action against the State; sovereign immunity, therefore, applied and protected not only the State but its employees as well. *Milligan v. Burrow*, 52 Ark. App. 20, 914 S.W.2d 763 (1996).

Jurisdiction.

The trial court acquires no jurisdiction where the pleadings show that a suit is, in effect, one against the state. *Pitcock v. State*, 91 Ark. 527, 121 S.W. 742 (1909).

Prohibition.

Prohibition is the proper remedy to prevent chancery court and judge thereof from trying action against the state. *Arkansas State Hwy. Comm'n v. Cunningham*, 239 Ark. 890, 395 S.W.2d 13 (1965).

Cited: *Martin v. Roesch*, 57 Ark. 474, 21 S.W. 881 (1893); *Ottinger v. Blackwell*, 173 F. Supp. 817 (E.D. Ark. 1959); *Wenderoth v. Baker*, 238 Ark. 464, 382 S.W.2d 578 (1964); *Boshears v. Arkansas Racing Comm'n*, 258 Ark. 741, 528 S.W.2d 646 (1975); *Department of Fin. & Admin.*

v. Arkansas Merit Sys. Council Bd., 280 Ark. 325, 658 S.W.2d 369 (1983); Autry v. Lawrence, 286 Ark. 501, 696 S.W.2d 315 (1985); Beaulieu v. Gray, 288 Ark. 395, 705 S.W.2d 880 (1986); City of Little Rock v. Weber, 298 Ark. 382, 767 S.W.2d 529 (1989); Waire v. Joseph, 308 Ark. 528, 825 S.W.2d 594 (1992); Arkansas Dep't of Human Servs. v. Kistler, 320 Ark. 501, 898

S.W.2d 32 (1995); State, Dep't of Fin. & Admin. v. Tedder, 326 Ark. 495, 932 S.W.2d 755 (1996); Hein v. Arkansas State Univ., 972 F. Supp. 1175 (1997); Qualls v. Ferritor, 329 Ark. 235, 947 S.W.2d 10 (1997); Jacoby v. Arkansas Dep't of Educ., 331 Ark. 508, 962 S.W.2d 773 (1998); Carson v. Weiss, 333 Ark. 561, 972 S.W.2d 933 (1998).

§ 21. Laws by bills — Amendment.

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house, as to change its original purpose.

CASE NOTES

ANALYSIS

Purpose.

Appropriations.

Change of purpose of bill.

Stripping.

Purpose.

The purpose of this section was to forbid amendments which should not be germane to the subject expressed by the title of the act. Loftin v. Watson, 32 Ark. 414 (1877); Hickey v. State, 114 Ark. 526, 170 S.W. 562 (1914); Dickinson v. Johnson, 117 Ark. 582, 176 S.W. 116 (1915); Cone v. Garner, 175 Ark. 860, 3 S.W.2d 1 (1927).

Appropriations.

The Constitution does not require appropriation measures to be voted on by a committee of the whole. Matthews v. Bailey, 198 Ark. 830, 131 S.W.2d 425 (1939).

Change of Purpose of Bill.

Where a bill that had as its sole purpose

the creation of a tax credit for dependents was amended by deleting the original purpose and substituting language assessing a tax surcharge against those residents of school districts with a millage rate below 25 miles, there was a violation of the constitutional prohibition against altering a bill so "as to change its original purpose." Barclay v. Melton, 339 Ark. 362, 5 S.W.3d 457 (1999).

Stripping.

This section does not prohibit the house from amending a senate bill by striking all after the enacting clause and substituting a new bill so long as the amendment does not change the original purpose. Reitzammer v. Desha Rd. Imp. Dist. No. 2, 139 Ark. 168, 213 S.W. 773 (1919).

Cited: Freeze v. Jones, 260 Ark. 193, 539 S.W.2d 425 (1976); Arkansas Motor Carriers Ass'n v. Pritchett, 303 Ark. 620, 798 S.W.2d 918 (1990).

§ 22. Passage of bills.

Every bill shall be read at length, on three different days, in each house; unless the rules be suspended by two-thirds of the house, when the same may be read a second or third time on the same day; and no bill shall become a law unless, on its final passage, the vote be taken by yeas and nays; the names of the persons voting for and against the same be entered on the journal; and a majority of each house be recorded thereon as voting in its favor.

CASE NOTES

ANALYSIS

Concurrent resolutions.
 Presumption of validity.
 Reading of bill.
 Recording of yeas and nays.
 —Illegal vote.
 Same bill.

Concurrent Resolutions.

Concurrent resolutions cannot be used to enact laws. *Dickinson v. Johnson*, 117 Ark. 582, 176 S.W. 116 (1915).

Presumption of Validity.

It is presumed that requirements of this section have been met. *Road Imp. Dist. No. 16 v. Sale*, 154 Ark. 551, 243 S.W. 825 (1922); *Huff v. Udey*, 173 Ark. 464, 292 S.W. 693 (1927); *Bush v. Martineau*, 174 Ark. 214, 295 S.W. 9 (1927).

The presumption of validity of a legislative act signed by the Governor as originally introduced and then deposited with the Secretary of State is not overcome by the fact that the bill was amended by the house or because house and senate journals merely noted passage of the bill without mentioning amendment. *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956).

Reading of Bill.

Where a bill passed by the House was transmitted to the Senate where it was referred to a committee after two readings, and while there pending it was recalled by the House for reconsideration and subsequently passed a second time, whereupon it was returned to the Senate, read for a third time and passed, was held that there was compliance with the first clause of this section. *State v. Crawford*, 35 Ark. 237 (1879).

The requirements as to reading were to prevent hasty legislation by giving members time to inform themselves. The reading may be by title only or dispensed with upon a suspension of the rules, which will be presumed for the purpose of upholding

a law; in addition, the bill may be read in both branches on the same day. *Chicot County v. Davies*, 40 Ark. 200 (1882).

Recording of Yeas and Nays.

The Constitution of 1868 contained a provision similar to that found in this clause; thus, it was held that a bill did not become a law where the house journal showed the number of votes given on its final passage in the affirmative and in the negative, and the names of those voting in the affirmative, but there was no entry of the names of those who voted in the negative. *Smithee v. Garth*, 33 Ark. 17 (1878).

The mandatory provisions that vote be taken by yeas and nays refers only to vote on passage of bills and is not required when one branch after regular passage of the bill passes upon amendments made in the other branch. *State v. Corbett*, 61 Ark. 226, 32 S.W. 686 (1895); *State v. Crowe*, 130 Ark. 272, 197 S.W. 4 (1917).

The provision concerning the manner of voting is mandatory. *State v. Bowman*, 90 Ark. 174, 118 S.W. 711 (1909); *Butler v. Kavanaugh*, 103 Ark. 109, 146 S.W. 120 (1912); *Niven v. Road Imp. Dist. No. 14*, 132 Ark. 240, 200 S.W. 997 (1918).

Names of absentees not required to be recorded when vote is taken on a bill. *Ruddell v. Gray*, 171 Ark. 547, 285 S.W. 2 (1926).

—Illegal Vote.

A statute did not receive the necessary majority vote of the Senate where it would not have passed without the vote of a state senator unlawfully appointed by the Governor to fill a vacancy. *Smith v. Ridgeview Baptist Church, Inc.*, 257 Ark. 139, 514 S.W.2d 717 (1974).

Same Bill.

The same bill must be passed by both houses. *Rogers v. State*, 72 Ark. 565, 82 S.W. 169 (1904).

Cited: *Bell v. Adams*, 243 Ark. 895, 422 S.W.2d 691 (1968).

§ 23. Revival, amendment or extension of laws.

No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended or conferred, shall be reenacted and published at length.

CASE NOTES

ANALYSIS

In general.

Effect of amendment.

Extension by reference.

Municipal ordinances.

Original act void.

Reference statutes original in themselves.

Repeal by implication.

In General.

This section does not make it necessary, when a new statute is passed, that all prior laws modified, affected, or repealed by implication should be reenacted. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

There is no requirement that an amendatory statute be so self-sufficient that no examination of the act being amended is needed for a complete understanding of the changes being made. *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

Effect of Amendment.

The amendatory provision becomes a part of the original act and in its relation to other sections stands as though the act had been originally enacted in the amended form. *Mondschien v. State*, 55 Ark. 389, 18 S.W. 383 (1892); *Palmer v. Palmer*, 132 Ark. 609, 202 S.W. 19 (1918).

This section was not violated by an amendment which identified the section amended by act, chapter, and section numbers and by code section number. *City of Manila v. Downing*, 244 Ark. 442, 425 S.W.2d 528 (1968).

There is no requirement that an amendatory statute be so self-sufficient that no examination of the act being amended is needed for a complete understanding of the changes being made. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

Extension by Reference.

An act which referred to several sections of the digest and undertook to extend their application to chancery courts was violative of this section. *Beard v. Wilson*, 52 Ark. 290, 12 S.W. 567 (1889).

An act which undertook to extend the application of an act by stating "so much as reads 'Charleston District' is amended to read 'Charleston District and Barham and Wittich Townships'" was violative of

this section. *Rider v. State*, 132 Ark. 27, 200 S.W. 275 (1918).

The term "extended," as used in this section, has reference to an attempt by the law-making body to add something to the text of a pre-existing law or to impose conditions upon another statute. *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420 (1940).

Municipal Ordinances.

This section does not apply to municipal ordinances. *Shepherd v. City of Little Rock*, 183 Ark. 244, 35 S.W.2d 361 (1931).

Original Act Void.

An act purporting to amend a void act is not necessarily void because of the invalidity of the original act. *State v. Corbett*, 61 Ark. 226, 32 S.W. 686 (1895).

If the original act was inoperative, a subsequent act could not vitalize it. *House v. Road Imp. Dist. No. 4*, 154 Ark. 218, 242 S.W. 68 (1922).

Reference Statutes Original in Themselves.

There is a class of statutes known as "reference statutes" which are original and in themselves intelligible and complete, which refer to and by reference adopt wholly or partially, pre-existing statutes. Such statutes are not strictly amendatory or revisory and are not obnoxious to this section. *Bonner v. Snipes*, 103 Ark. 298, 147 S.W. 56 (1912); *State v. McKinley*, 120 Ark. 165, 179 S.W. 181 (1915); *White v. Loughborough*, 125 Ark. 57, 188 S.W. 10 (1916); *Harrington v. White*, 131 Ark. 291, 199 S.W. 92 (1917); *Hermitage Special School Dist. v. Ingalls Special School Dist.*, 133 Ark. 157, 202 S.W. 26 (1918); *House v. Road Imp. Dist. No. 4*, 154 Ark. 218, 242 S.W. 68 (1922); *Arkansas Rd. Comm'n v. Stout Lumber Co.*, 161 Ark. 164, 255 S.W. 912 (1923); *Barnett v. McCray*, 169 Ark. 833, 277 S.W. 45 (1925); *Grable v. Blackwood*, 180 Ark. 311, 22 S.W.2d 41 (1929); *Arkansas State Hwy. Comm'n v. Otis & Co.*, 182 Ark. 242, 31 S.W.2d 427 (1930); *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420 (1940); *Potashnick Local Truck Sys. v. Fikes*, 204 Ark. 924, 165 S.W.2d 615 (1942).

Act to abolish curtesy and confer a right

by reference merely is void. *Farris v. Wright*, 158 Ark. 519, 250 S.W. 889 (1923).

Legislation drafted under the legislative drafting technique of cross-reference to other statutes governing related matter not actually “revived, amended, extended or conferred” by the particular enactment, is known as a reference statute and is valid. *Austin v. Manning*, 217 Ark. 538, 231 S.W.2d 101 (1950).

Repeal by Implication.

Repeals by implication are not within the meaning of this provision, and it is not essential that acts should reenact, or even refer to acts or sections which by implication they repeal or amend. *City of Little Rock v. Quindley*, 61 Ark. 622, 33 S.W. 1053 (1896).

A statute repeals or operates as an amendment of a prior law on the same subject to the extent that they are in conflict although the latter is not mentioned in the former. *Saint Louis, I.M. & S. Ry. v. Paul*, 64 Ark. 83, 40 S.W. 705 (1897), *aff’d*, 173 U.S. 404, 19 S. Ct. 419, 43 L. Ed. 746 (1899); *Porter v. Waterman*, 77 Ark. 383, 91 S.W. 754 (1906); *Butler v. Board of Dirs.*, 99 Ark. 100, 137 S.W. 251 (1911); *Common Sch. Dist. No. 13 v. Oak Grove Special Sch. Dist.*, 102 Ark. 411, 144 S.W. 224 (1912).

Cited: *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), overruled in part, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

§ 24. Local and special laws.

The General Assembly shall not pass any local or special law, changing the venue in criminal cases; changing the names of persons, or adopting or legitimating children; granting divorces; vacating roads, streets or alleys.

Publisher’s Notes. This section may be superseded by Ark. Const. Amend. 14.

CASE NOTES

ANALYSIS

Changing venue.
Vacating roads.

Changing Venue.

Section 5-4-616 is not a local or special law changing the venue in criminal cases. *Pickens v. State*, 292 Ark. 362, 730 S.W.2d 230, cert. denied, 484 U.S. 917, 108 S. Ct. 269, 98 L. Ed. 2d 226 (1987).

Vacating Roads.

The provision of this section concerning vacating roads was designed to prevent the passing of an act, the effect of which

was to vacate a road, but does not prevent the legislature from prescribing procedure to be followed in changing or altering public roads. *Tuggle v. Tribble*, 177 Ark. 296, 6 S.W.2d 312 (1928).

Statute relieving railroad company from prior statutory duty to erect and maintain a viaduct over certain tracks in city of Texarkana was not unconstitutional as violative of this section. *Greer v. Texarkana*, 201 Ark. 1041, 147 S.W.2d 1004 (1941).

Cited: *Laman v. Harrill*, 233 Ark. 967, 349 S.W.2d 814 (1961).

§ 25. Special laws — Suspension of general laws.

In all cases where a general law can be made applicable, no special law shall be enacted; nor shall the operation of any general law be suspended by the legislature for the benefit of any particular individual, corporation or association; nor where the courts have jurisdiction to grant the powers, or the privileges, or the relief asked for.

Publisher's Notes. This section may be superseded by Ark. Const. Amend. 14.

CASE NOTES

ANALYSIS

Discretion of legislature.

Jurisdiction.

Particular laws.

Discretion of Legislature.

Under the first clause of this section, it is left to the discretion of the legislature to determine the case in which the special law should be passed so long as the legislature acts within its enumerated powers. *Boyd v. Bryant*, 35 Ark. 69, 37 Am. R. 6 (1879); *City of Little Rock v. Parish*, 36 Ark. 166 (1880); *Davis v. Gaines*, 48 Ark. 370, 3 S.W. 184 (1886); *Carson v. St. Francis Levee Dist.*, 59 Ark. 513, 27 S.W. 590 (1894); *Powell v. Durden*, 61 Ark. 21, 31 S.W. 740 (1895); *Hendricks v. Block*, 80 Ark. 333, 97 S.W. 63 (1906); *Saint Louis S.W.R.R. v. State*, 97 Ark. 473, 134 S.W. 970 (1911); *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912); *Sanderson v. Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912); *Van Hook v. McNeil Monument Co.*, 107 Ark. 292, 155 S.W. 110 (1913); *Greer v. Merchants' & Mechanics' Bank*, 114 Ark. 212, 169 S.W. 802 (1914).

The Arkansas Medical Malpractice Act, § 16-112-201 et seq., does not violate the constitutional prohibition against special legislation since this section is not mandatory, but rather directory or merely cautionary, as applied to the General Assembly. *Haase v. Starnes*, 323 Ark. 263, 915 S.W.2d 675 (1996), appeal dismissed, 337 Ark. 193, 987 S.W.2d 704 (1999).

Jurisdiction.

The last clause does not refer to the jurisdiction conferred upon courts by statute, but refers to cases where the courts have jurisdiction independently of statute. *School Dist. v. West Hartford Special School Dist.*, 102 Ark. 261, 143 S.W. 895 (1912).

Particular Laws.

Section 16-56-112(b) does not violate this section because limited to those furnishing design or construction for improvements to real estate. *Carter v. Hartenstein*, 248 Ark. 1172, 455 S.W.2d 918 (1970), appeal dismissed, 401 U.S. 901, 91 S. Ct. 868, 27 L. Ed. 2d 800 (1971).

The notice requirement of § 16-114-204, relating to medical malpractice actions, does not violate the due process clause of the United States Constitution and this section, which prohibits special legislation. *Dawson v. Gerritsen*, 290 Ark. 499, 720 S.W.2d 714 (1986).

Section 23-110-406, governing redemption of racing tickets, is not "special" legislation since there is a rational basis for the distinction between the shorter 180 day limitation period established under § 23-110-406 and the longer limitation periods established under other Arkansas statutes. *Mahurin v. Oaklawn Jockey Club*, 299 Ark. 13, 771 S.W.2d 19 (1989).

Cited: *Laman v. Harrill*, 233 Ark. 967, 349 S.W.2d 814 (1961); *Jackson v. Ozment*, 283 Ark. 100, 671 S.W.2d 736 (1984).

§ 26. Notice of local or special bills.

No local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published, in the locality where the matter or the thing to be affected may be situated; which notice shall be, at least, thirty days prior to the introduction into the General Assembly of such bill, and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the General Assembly before such act shall be passed.

Publisher's Notes. This section may be superseded by Ark. Const. Amend. 14.

CASE NOTES

ANALYSIS

Discretion of legislature.
Validity of act.

Discretion of Legislature.

The legislature is the sole judge of whether or not the requirement of notice has been complied with. *Davis v. Gaines*, 48 Ark. 370, 3 S.W. 184 (1886); *Waterman v. Hawkins*, 75 Ark. 120, 86 S.W. 844

(1905); *Caton v. Western Clay Drainage Dist.*, 87 Ark. 8, 112 S.W. 145 (1908); *Saint Louis S.W.R.R. v. State*, 97 Ark. 473, 134 S.W. 970 (1911).

Validity of Act.

The requirement of 30 days' notice is mandatory, and where it judicially appears that it has not been given, the special act is void. *Booe v. Road Imp. Dist.* No. 4, 141 Ark. 140, 216 S.W. 500 (1919).

§ 27. Extra compensation prohibited — Exception.

No extra compensation shall be made to any officer, agent, employee, or contractor, after the service shall have been rendered, or the contract made; nor shall any money be appropriated or paid on any claim, the subject matter of which shall not have been provided for by preexisting laws; unless such compensation, or claim, be allowed by bill passed by two-thirds of the members elected to each branch of the General Assembly.

CASE NOTES

In General.

The effect of this section is to prevent the legislature from making appropriations in satisfaction of contracts not authorized by some law existing at the time the contract was made unless upon a vote

of two-thirds of the members of the legislature. *Jobe v. Urquhart*, 102 Ark. 470, 143 S.W. 121 (1912); *Oliver v. Southern Trust Co.*, 138 Ark. 381, 212 S.W. 77 (1919).

§ 28. Adjournments.

Neither house shall, without the consent of the other, adjourn for more than three days; nor to any other place than that in which the two houses shall be sitting.

§ 29. Appropriations.

No money shall be drawn from the treasury except in pursuance of specific appropriation made by law, the purpose of which shall be distinctly stated in the bill, and the maximum amount which may be drawn shall be specified in dollars and cents; and no appropriations shall be for a longer period than two years.

CASE NOTES

ANALYSIS

In general.
Construction.
Appropriation.
Cash funds.

Common school funds.
Illustrative case.
Legislative expenses.
Period of appropriation.
Salaries of constitutional officers.
Salaries of judicial personnel.

In General.

All funds required by statute to be paid into the State Treasury come within the meaning of this section and can not be drawn therefrom except in pursuance of specific appropriation. *Dickinson v. Clibourn*, 125 Ark. 101, 187 S.W. 909 (1916); *Lund v. Dickinson*, 126 Ark. 243, 190 S.W. 428 (1916); *Oliver v. Bolinger*, 146 Ark. 242, 225 S.W. 314 (1920).

There is no express constitutional restriction upon the supreme power of the legislature to deal with public revenues of any type prior to the time that such revenues are placed in the State Treasury. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Construction.

This section requires appropriation acts to declare how the appropriated funds will be used instead of merely explaining why the funds were appropriated. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

Appropriation.

A statute which fixed the amount that could be raised by bonds and required that the funds so raised be used for a specific purpose was held to be a specific appropriation. *Hudson v. Higgins*, 175 Ark. 585, 299 S.W. 1000 (1928).

Provision for transfer of stated amount from Game Protection Fund and General Revenue Special Fund was invalid for failure to distinctly state the purpose of the transfer contrary to this section. *Arkansas Game & Fish Comm'n v. Page*, 192 Ark. 732, 94 S.W.2d 107 (1936).

Specific appropriation by the legislature is an absolute prerequisite to the drawing or paying of money from the state treasury for general, ordinary, special, contingent or other expenses of the state. Director of Bureau of Legislative Research v. *Mackrell*, 212 Ark. 40, 204 S.W.2d 893 (1947).

Statute which specifies appropriations in dollars and cents, contains no appropriation that is not for a specific purpose, and does not authorize the drawing of money from the treasury without an appropriation, meets every requirement of this section of the Constitution. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

The general accounting procedures law does not authorize the withdrawal of any

money from the State Treasury and is not an appropriation act, nor is it unconstitutional as an unauthorized delegation of legislative powers. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

The exercise by the department of correction of an option to purchase certain printing and duplicating equipment based upon an appropriations law authorizing the expenditure of a greater amount on maintenance and general operation satisfied the requirements of this section and Ark. Const., Art. 16, § 12 as to sufficient specificity. *Wells v. Heath*, 274 Ark. 45, 622 S.W.2d 163 (1981).

Cash Funds.

Provisions relative to withdrawal of funds from State Treasury refers only to money that is in the State Treasury, and does not refer to money held elsewhere which has never reached the treasury. *Gipson v. Ingram*, 215 Ark. 812, 223 S.W.2d 595 (1949); *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977).

Cash funds which are not subject to the provisions of this section or Ark. Const., Art. 16, § 12, are those received by the state agencies and institutions from sources other than taxes as the term taxes is ordinarily used. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

The provisions of this section are inapplicable to the State Revenue Department Building Funds. *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962).

This provision was not applicable to an excise tax levied upon real estate transfers and not paid into the State Treasury but held by the Commission of Revenue (now Department of Finance and Administration) for the state agencies for whose benefit it was levied. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

Common School Funds.

There is no necessity for an appropriation of the common school funds. *Dickinson v. Edmondson*, 120 Ark. 80, 178 S.W. 930 (1915).

Illustrative Case.

Acts 1995, No. 739, did not violate this section as the act distinctly states that it is intended to accomplish the purpose of increasing tourism, recreation, and economic development by defraying the cost

of construction and equipping a civic center. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

Legislative Expenses.

The expenses of a legislative committee may not be paid out of contingent expenses, rather, a bill making specific appropriations is required before payment can be made. *Dickinson v. Johnson*, 117 Ark. 582, 176 S.W. 116 (1915).

Period of Appropriation.

It is not within the authority of the legislature to make a continuing appropriation out of a special fund raised by a special tax for a specific purpose beyond a period of two years. *Moore v. Alexander*, 85 Ark. 171, 107 S.W. 395 (1908); *Jobe v. Caldwell*, 93 Ark. 503, 125 S.W. 423 (1910).

Statute authorizing the Highway Commission to carry forward from the first fiscal year of the biennium to the second year fiscal appropriation authorizations not used in the first year did not violate

this section. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

Salaries of Constitutional Officers.

This section controls payments from the treasury of matters not covered by constitutional appropriation, it does not apply to the payment of the salaries of constitutional officers. *Smith v. Page*, 192 Ark. 342, 91 S.W.2d 281 (1936).

Salaries of Judicial Personnel.

Where a statute permitted a circuit judge to fix the salaries of court personnel above a certain minimum, but the legislature did not actually appropriate the money to pay those salaries, the act was an unlawful delegation of legislative authority since it permitted the court to legislate those salaries. *Beaumont v. Adkisson*, 267 Ark. 511, 593 S.W.2d 11 (1980).

Cited: *Clayton v. City of Little Rock*, 211 Ark. 893, 204 S.W.2d 145 (1947); *Clark v. State*, 308 Ark. 453, 824 S.W.2d 345 (1992).

§ 30. General and special appropriations.

The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State; all other appropriations shall be made by separate bills, each embracing but one subject.

CASE NOTES

ANALYSIS

Purpose.

Self-executing.

Unity of subject.

Purpose.

The object of this section was to prevent omnibus bills. *Perkins v. DuVal*, 31 Ark. 236 (1876) (decision under prior Constitution).

The purpose of constitutional provisions such as this to prevent the inclusion of separate and unrelated appropriations in a single bill because that practice opens the door to the evils that have come to be known as logrolling and pork barrel legislation. *Cottrell v. Faubus*, 233 Ark. 721, 347 S.W.2d 52 (1961).

Self-Executing.

If this provision is a mandate for the legislature always to adopt such a general

appropriation bill, it is not self-executing so far as the legislature is concerned, but the Constitution self-executes it. *Smith v. Page*, 192 Ark. 342, 91 S.W.2d 281 (1936).

Unity of Subject.

The unity of the subject of an appropriation is not broken by appropriating several sums for several specific objects which are necessary or convenient or tend to the accomplishment of one general design, notwithstanding other purposes than the main design may be thereby subserved. *State v. Sloan*, 66 Ark. 575, 53 S.W. 47 (1899); *Vincenheller v. Reagan*, 69 Ark. 460, 64 S.W. 278 (1901); *Johnson v. Johnson*, 84 Ark. 307, 105 S.W. 869 (1907).

A general appropriation bill containing at least 24 separate and unrelated appropriations is contrary to this article and thus unconstitutional in its entirety.

Cottrell v. Faubus, 233 Ark. 721, 347 S.W.2d 52 (1961).

The objection that the statute contained more than one subject contrary to this section in that it has to do with construction and maintenance of roads and highways was settled in view of the court's opinion that, had any power conferred or duty enjoined upon the Highway Commission been left out, the construction of roads and highways in this state would have been delayed. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

The provisions of the statute providing for compensation to attorneys in collateral proceedings did not fall within the subject matter of the bill and were invalid; however, because the severability clause was valid, the remainder of the appropriations would still stand. *Reid v. Jones*, 261 Ark. 550, 551 S.W.2d 191 (1977).

Part of an act, the effect of which was to transfer Cleveland County from one judicial district to another, violated this section because the act was an appropriation bill for the judicial retirement system, and appropriation bills are limited to one subject. *Clinton v. Taylor*, 284 Ark. 238, 681 S.W.2d 338 (1984).

Appropriations act dealing with one subject, funding for personal services and operating expenses of the Arkansas Highway and Transportation Department (AHTD), did not violate the provisions of this section, although the act also contained provisions establishing agency powers and duties, salary limits, numbers of authorized personnel, overtime pay, uniform and tool allowance, and moving expenses, which are not merely appropriations in nature, but relate to administration of the AHTD. *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

The Constitution does not prohibit the addition of substantive provisions establishing powers and duties to appropriations acts where all such provisions relate to but one subject. *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

Cited: *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962); *Fisher v. Perroni*, 299 Ark. 227, 771 S.W.2d 766 (1989); *First Nat'l Bank v. Clinton*, 304 Ark. 411, 802 S.W.2d 928 (1991); *Clark v. State*, 308 Ark. 453, 824 S.W.2d 345 (1992).

§ 31. Purposes of taxes and appropriations.

No State tax shall be allowed, or appropriation of money made, except to raise means for the payment of the just debts of the State, for defraying the necessary expenses of government, to sustain common schools, to repel invasion and suppress insurrection, except by a majority of two-thirds of both houses of the General Assembly.

RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

CASE NOTES

Necessary Expense.

Legislature has right to determine what is necessary expense of government, except that its determination may not be arbitrary to such extent that thing or purpose clearly outside of line of necessary expenses of government may receive monetary benefactions. *State v. Sloan*, 66 Ark. 575, 53 S.W. 47 (1899); *State v. Moore*, 76 Ark. 197, 88 S.W. 881 (1905);

Humphrey v. Garrett, 218 Ark. 418, 236 S.W.2d 569 (1951).

It is a question of law for the court to determine whether an appropriation under consideration is for defraying necessary expenses of government. *Belote v. Coffman*, 117 Ark. 352, 175 S.W. 37 (1915); *Oliver v. Southern Trust Co.*, 138 Ark. 381, 212 S.W. 77 (1919); *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929).

Improving portions of state capitol building a necessary expense. *Hopper v. Fagan*, 151 Ark. 428, 236 S.W. 820 (1922).

Where the state has adopted a policy of higher education of its citizens, the maintenance of such schools becomes a necessary expense of government. *Hudson v. Higgins*, 175 Ark. 585, 299 S.W. 1000 (1927).

Although this section provides that no appropriation shall be made except for “defraying the necessary expenses of government” and the legislature has the exclusive right to determine what is necessary, there is no conflict between this section

and Ark. Const. Amend. 35 where the legislature is attempting to substitute its judgment for that of the Game and Fish Commission on a question of management of resources, something it cannot do. This section and Ark. Const. Amend. 35 are not irreconcilable; Ark. Const. Amend. 35 gave the commission more power to act independently than other state agencies that are not independent constitutional agencies. *Chaffin v. Arkansas Game & Fish Comm’n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

Cited: *Clark v. State*, 308 Ark. 453, 824 S.W.2d 345 (1992).

§ 32. Workmen’s Compensation Laws — Actions for personal injuries.

The General Assembly shall have power to enact laws prescribing the amount of compensation to be paid by employers for injuries to or death of employees, and to whom said payment shall be made. It shall have power to provide the means, methods, and forum for adjudicating claims arising under said laws, and for securing payment of same. Provided, that otherwise no law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property; and in case of death from such injuries the right of action shall survive, and the General Assembly shall prescribe for whose benefit such action shall be prosecuted. [As amended by Const. Amend. 26.]

Publisher’s Notes. Prior to amendment, this section read: “No act of the General Assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and in case of death from such inju-

ries the right of action shall survive and the General Assembly shall prescribe for whose benefit such action shall be prosecuted.”

Cross References. Workers’ Compensation Law, § 11-9-101 et seq.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Punitive Damages in Ark. — Expanded? Restricted?, 1990 Ark. L. Notes 25.

Ark. L. Rev. Workmen’s Compensation — Common Law Tort Liability of Principal Contractor to Employees of Sub-Contractor, 17 Ark. L. Rev. 213.

UALR L.J. Survey of Arkansas Law, Worker’s Compensation, 1 UALR L.J. 270.

Sullivan, The Arkansas Remedy For Employer Retaliation Against Workers’ Compensation Claimants, 16 UALR L.J. 373.

CASE NOTES

ANALYSIS

Purpose.
Amendments.

Appeal from Workers’ Compensation Commission.
Common law liability.
Conditions precedent to limit of recovery.

Conflict of laws.
Excessive award.
Exclusive remedy.
Injuries to persons or property.

Purpose.

The purpose and effect of the Workers' Compensation Act was to substitute, as to employment embraced within its terms, the liability created by it for any and all liability of the master arising from the death or injury of his servant, such remedies being exclusive unless the employer fails to secure the payment of compensation as required by said act. *Odom v. Arkansas Pipe & Scrap Material Co.*, 208 Ark. 678, 187 S.W.2d 320 (1945).

Amendments.

This section was modified by Ark. Const., Amend. 26, to permit the legislature to enact workers' compensation laws. *Young v. G.L. Tarlton, Contractor*, 204 Ark. 283, 162 S.W.2d 477 (1942); *Odom v. Arkansas Pipe & Scrap Material Co.*, 208 Ark. 678, 187 S.W.2d 320 (1945).

Where the final passage by the house of a proposed constitutional amendment affecting the provisions of this section did not reflect an unrecorded amendment adopted by viva voce vote, the house and senate versions of the proposed amendment differed, the requirements of Ark. Const., Art. 19, § 22 had not been met, and the proposed amendment was not placed on the election ballot. *Jernigan v. Niblock*, 260 Ark. 406, 540 S.W.2d 593 (1976).

Appeal from Workers' Compensation Commission.

Ark. Const., Amend. 26, does not amend Article 7 so as to allow direct appeal from the workers' compensation commission since nothing express or implied in the amendment indicates that the court system will be changed by it. *Ward School Bus Mfg., Inc. v. Fowler*, 261 Ark. 100, 547 S.W.2d 394 (1977).

Common Law Liability.

The Workers' Compensation Act did not expressly or by necessary implication disclose an intent to limit or eliminate the common-law liability of the general contractor for his own wrongful acts to employees other than his own. *Anderson v. Sanderson & Porter*, 146 F.2d 58 (8th Cir. 1945).

Where the parents had recovered under the Workers' Compensation Act for a minor son's death, suit to recover damages was properly dismissed since, under the provisions of said act, the liability therein created is the only liability against the employer that may arise out of the death or injury of an employee subject to the act. *Odom v. Arkansas Pipe & Scrap Material Co.*, 208 Ark. 678, 187 S.W.2d 320 (1945).

Conditions Precedent to Limit of Recovery.

Only in cases where the employer-employee relationship existed could the legislature limit the amount of recovery. *Baldwin Co. v. Maner*, 224 Ark. 348, 273 S.W.2d 28 (1954).

Conflict of Laws.

Employee of Louisiana corporation injured in Arkansas and resident of this state at the time of the injury was not precluded from bringing common-law action in Arkansas by extra-territorial effect of Workers' Compensation Act of Louisiana. *Haynes Drilling Corp. v. Smith*, 200 Ark. 1098, 143 S.W.2d 27 (1940).

Excessive Award.

If damages awarded by a jury are excessive, the court may direct a remittitur. *Little Rock & Ft. S.R.R. v. Barker*, 39 Ark. 491 (1882).

Exclusive Remedy.

Employee of subcontractor could not sue contractor for damages since remedy of employee against contractor as statutory employer was solely for compensation. *Huffstettler v. Lion Oil Co.*, 110 F. Supp. 222 (W.D. Ark.), aff'd, 208 F.2d 549 (8th Cir. 1953).

Injuries to Persons or Property.

Injuries to persons or property was intended to mean physical injuries to the person and physical damage to property, not damage to business earnings, and the telephone company tariff limiting liability for damages caused by listing omissions did not violate this section. *Southwestern Bell Tel. Co. v. Wilkes*, 269 Ark. 399, 601 S.W.2d 855 (1980).

Cited: *Lanza v. Carroll*, 216 F.2d 808 (8th Cir. 1954); *Ellington v. Hartford Steam Boiler Inspection & Ins. Co.*, 53 F.R.D. 280 (W.D. Ark. 1971); *Brothers v. Dierks Lumber & Coal Co.*, 217 Ark. 632,

232 S.W.2d 646 (1950); *City of Waldo v. (1982); McClain v. Texaco, Inc., 29 Ark. Poetker, 275 Ark. 216, 628 S.W.2d 329 App. 218, 780 S.W.2d 34 (1989).*

§ 33. Liabilities of corporations to state.

No obligation or liability of any railroad, or other corporation, held or owned by this State shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the General Assembly; nor shall such liability or obligation be released, except by payment thereof into the State treasury.

§ 34. Introduction of bills — Time limit.

No new bill shall be introduced into either house during the last three days of the session.

CASE NOTES

Extraordinary Sessions.

The fact that a bill is introduced during the last three days of an Extraordinary Session does not violate this section as such sessions are of such exceptional character and so limited as to duration and

objects of legislation that they are placed under the heading of executive department and are under the control of the Governor. *Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).*

§ 35. Bribery of member of General Assembly or state officer.

Any person who shall, directly or indirectly, offer, give, or promise any money, or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer, or member of the General Assembly; and any such executive or judicial officer, or member of the General Assembly, who shall receive or consent to receive any such consideration, either directly or indirectly, to influence his action in the performance or non performance of his public or official duty, shall be guilty of a felony, and be punished accordingly.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct Under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

§ 36. Expulsion of member no bar to indictment.

Proceedings to expel a member for a criminal offense, whether successful or not, shall not bar an indictment and punishment, under the criminal laws, for the same offense.

[§ 37.] Laws — Enactment — Majority required.

§ 1. Not less than a majority of the members of each House of the General Assembly may enact a law. [As added to Art. 5 by Const. Amend. 19.]

Publisher's Notes. As added by Ark. Const., Amend. 19, § 5 [§ 41] contained a second paragraph which read: "The provisions of the Constitution of the State of Arkansas in conflict with this Amendment

are hereby repealed in so far as they are in conflict herewith, and this Amendment shall be self-executing and shall take and have full effect immediately upon its adoption by the electors of the State."

[§ 38.] Taxes — Increase — Approval by electors.

§ 2. None of the rates for property, excise, privilege or personal taxes, now levied shall be increased by the General Assembly except after the approval of the qualified electors voting thereon at an election, or in case of emergency, by the votes of three-fourths of the members elected to each House of the General Assembly. [As added to Art. 5 by Const. Amend. 19.]

Publisher's Notes. As added by Ark. Const., Amend. 19, § 5 [§ 41] contained a second paragraph which read: "The provisions of the Constitution of the State of Arkansas in conflict with this Amendment

are hereby repealed in so far as they are in conflict herewith, and this Amendment shall be self-executing and shall take and have full effect immediately upon its adoption by the electors of the State."

CASE NOTES

ANALYSIS

Applicability.

Excise taxes.

Income tax.

— Elimination of deduction.

Increase of taxes.

Applicability.

The limitations of this section apply only to increased rates for taxes in existence at the time Ark. Const. Amend. 19, which added this section, was adopted; other taxes or means of increasing revenue may be adopted without any declaration of emergency and without an extraordinary majority vote. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

Excise Taxes.

Statute imposing excise tax on retailer of intoxicating beer with privilege to pass it on to the consumer, to be collected in the first instance by the wholesaler from the retailer, was not violative of this section. *Caldarera v. McCarroll*, 198 Ark. 584, 129 S.W.2d 615 (1939).

Income Tax.

— Elimination of Deduction.

Act providing for elimination of amount

paid in federal taxes as a deduction under state gross income tax was not a violation of this section, prohibiting increase of tax rate, as elimination of deduction did not increase the rate, though amount of tax was increased for those paying federal income taxes. *Morley v. Rimmel*, 215 Ark. 434, 221 S.W.2d 51 (1949).

Increase of Taxes.

A statute which increased the tax upon premiums levied against insurance companies was within the limitations of this section even though it gave insurance companies the alternative of paying at the old rate if they made investments within the state of Arkansas equal to one-half their total reserves on Arkansas insurance. *Combs v. Glen Falls Ins. Co.*, 237 Ark. 745, 375 S.W.2d 809 (1964).

The emergency clause in Acts 1991, No. 1052, § 9, stated an emergency, inadequate support of education, sufficient to meet the requirements of this section to impose the tax provided in that act (see § 26-51-205). *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

[§ 39.] **State expenses — Limitation — Exceptions.**

§ 3. Excepting monies raised or collected for educational purposes, highway purposes, to pay Confederate pensions and the just debts of the State, the General Assembly is hereby prohibited from appropriating or expending more than the sum of Two and One-Half Million Dollars for all purposes, for any biennial period; provided the limit herein fixed may be exceeded by the votes of three-fourths of the members elected to each House of the General Assembly. [As added to Art. 5 by Const. Amend. 19.]

Publisher’s Notes. As added by Ark. Const., Amend. 19, § 5 [§ 41] contained a second paragraph which read: “The provisions of the Constitution of the State of Arkansas in conflict with this Amendment

are hereby repealed in so far as they are in conflict herewith, and this Amendment shall be self-executing and shall take and have full effect immediately upon its adoption by the electors of the State.”

CASE NOTES

ANALYSIS

Educational purposes.
Invalid appropriations.

Garrett, 218 Ark. 418, 236 S.W.2d 569 (1951).

Educational Purposes.

The exception in favor of moneys raised or collected for educational purposes is not broad enough to permit appropriation beyond limitation to support colleges having senior class in pharmaceutical education when appropriation was to be charged against the general fund. Humphrey v.

Invalid Appropriations.

Act 43 of 1989, which appropriated funds for constitutional officers’ salaries from sources other than those enumerated in this section, was invalid because it was not passed by a three-fourths vote in both houses as required by this section. Fisher v. Perroni, 299 Ark. 227, 771 S.W.2d 766 (1989).

[§ 40.] **General appropriation bill — Enactment.**

§ 4. In making appropriations for any biennial period, the General Assembly shall first pass the General Appropriation Bill provided for in Section 30 of Article 5 of the Constitution, and no other appropriation bill may be enacted before that shall have been done. [As added to Art. 5 by Const. Amend. 19.]

Publisher’s Notes. As added by Ark. Const., Amend. 19, § 5 [§ 41] contained a second paragraph which read: “The provisions of the Constitution of the State of Arkansas in conflict with this Amendment

are hereby repealed in so far as they are in conflict herewith, and this Amendment shall be self-executing and shall take and have full effect immediately upon its adoption by the electors of the State.”

CASE NOTES

Invalid Appropriations.

Because the General Assembly did not properly pass Act 43 of 1989 by the requisite three-fourths vote of both houses, all

subsequently enacted 1989 appropriation acts violated this section. Fisher v. Perroni, 299 Ark. 227, 771 S.W.2d 766 (1989).

[§ 41.] Expenses incurred or authorized only by bill — Repealing clause.

§ 5. No expense shall be incurred or authorized for either House except by a bill duly passed by both Houses and approved by the Governor. [As added to Art. 5 by Const. Amend. 19.]

Publisher's Notes. As added by Ark. Const., Amend. 19, § 5 [§ 41] contained a second paragraph which read: "The provisions of the Constitution of the State of Arkansas in conflict with this Amendment

are hereby repealed in so far as they are in conflict herewith, and this Amendment shall be self-executing and shall take and have full effect immediately upon its adoption by the electors of the State."

ARTICLE 6

EXECUTIVE DEPARTMENT

SECTION.

1. Executive officers.
2. Governor — Supreme executive power.
3. Election of executive officers.
4. Contested election.
5. Qualifications of Governor.
6. Governor, commander-in-chief of armed services.
7. Information and reports from departments.
8. Messages to General Assembly.
9. Seal of State.
10. Grants and commissions.
11. Incompatible offices.
12. President of Senate succeeding to Governor's office.

SECTION.

13. Speaker of House succeeding to office of Governor.
14. Election to fill vacancy.
15. Approval of bills — Vetoes.
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17. Vetoes of items of appropriation bills.
18. Pardoning power.
19. Extraordinary sessions of General Assembly — Calling — Purposes.
20. Power to adjourn General Assembly.
21. Duties of Secretary of State.
22. Duties of executive officers in general — Dual office holding prohibited — Vacancies — Filling.
23. Filling vacancies in other offices.

RESEARCH REFERENCES

Am. Jur. 16A Am. Jur. 2d, Constitutional Law, § 255 et seq.

C.J.S. 16 C.J.S., Constitutional Law, § 215 et seq.

§ 1. Executive officers.

The executive department of this State shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State and Attorney General, all of whom shall keep their offices in person at the seat of government and hold their offices for the term of two years and until their successors are elected and qualified, and the General Assembly may provide by law for the establishment of the office of Commissioner of State Lands. [As amended by Const. Amend. 6, § 1.]

Publisher's Notes. This section, as amended, was probably superseded by Ark. Const. Amend. 37, § 1, which was repealed by Ark. Const. Amend. 56, § 5, and replaced by § 1 of that amendment. However, Ark. Const. Amend. 56, § 1, has

probably been superseded by Ark. Const. Amend. 63, § 1.

Ark. Const. Amend. 6 inserted the words "Lieutenant Governor" in this provision.

RESEARCH REFERENCES

Ark. L. Rev. The Executive Branch — Fusing the Division of Authority, 24 Ark. L. Rev. 182.

CASE NOTES

ANALYSIS

Enforcement of laws.
Subordinates.

Enforcement of Laws.

Executive officers are liable to damages if they execute a statute which violates the Constitution. *Little Rock & Ft. S.R.R. v. Worthen*, 46 Ark. 312 (1885), writ of error dismissed, 120 U.S. 97, 7 S. Ct. 469, 30 L. Ed. 588 (1887).

Officers of the executive department are not bound to execute a statute which, in their judgment, is unconstitutional; their

primary allegiance is to the Constitution and, if there is a conflict between the two, the Constitution and not the statute is the law. *Little Rock & Ft. S.R.R. v. Worthen*, 46 Ark. 312 (1885), writ of error dismissed, 120 U.S. 97, 7 S. Ct. 469, 30 L. Ed. 588 (1887); *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656 (1912).

Subordinates.

Subordinates in the several departments may be said to be of them. *Oliver v. Martin*, 36 Ark. 134 (1880).

Cited: *State ex rel. Williams v. Karston*, 208 Ark. 703, 187 S.W.2d 327 (1945).

§ 2. Governor — Supreme executive power.

The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "the Governor of the State of Arkansas."

Publisher's Notes. See Ark. Const. Amend. 6, § 2, as to executive power of Governor and Lieutenant Governor.

CASE NOTES

Cited: *Spa Kennel Club, Inc. v. (1966); Curry v. State*, 279 Ark. 153, 649 Dunaway, 241 Ark. 51, 406 S.W.2d 128 S.W.2d 833 (1983).

§ 3. Election of executive officers.

The Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General shall be elected by the qualified electors of the State at large, at the time and places of voting for members of the General Assembly; the returns of each election therefor shall be sealed up separately and transmitted to the seat of government by the returning officers, and directed to the Speaker of the House of Representatives; who shall, during the first week of the session, open and publish the votes cast and given for each of the respective officers hereinbefore mentioned, in the presence of both houses of the General

Assembly. The person having the highest number of votes, for each of the respective offices, shall be declared duly elected thereto; but if two or more shall be equal, and highest in votes for the same office, one of them shall be chosen by the joint vote of both houses of the General Assembly, and a majority of all the members elected shall be necessary to a choice.

Publisher's Notes. See Ark. Const. Amend. 6, § 3, as to election of Governor and Lieutenant Governor.

CASE NOTES

ANALYSIS

Commissioner of public lands.
Highest number of votes cast.
Plurality vote.

Commissioner of Public Lands.

Provisions of Ark. Const., Amend. 37 (repealed, see Ark. Const., Amend. 56, § 1) adding the commissioner of public lands to those officers constituting the executive department did not amend the provisions of this section relating to the election of officers enumerated herein so that this section applied to the commissioner of public lands. *Rankin v. Jones*, 224 Ark. 1001, 278 S.W.2d 646 (1955).

The time of the commencement of the term of the commissioner of public lands is governed by § 21-1-102, rather than by this section. *Rankin v. Jones*, 224 Ark. 1001, 278 S.W.2d 646 (1955).

Highest Number of Votes Cast.

The language referring to "highest number of votes" in this section, relating

to the election of executive officers, does not mean merely that person with the lowest number of votes may not be declared elected as the phrase is distinctly different from the phrase "majority of the votes cast" when considered in the light of the constitutional provision. *Rockefeller v. Matthews*, 249 Ark. 341, 459 S.W.2d 110 (1970).

Plurality Vote.

The runoff election is not considered a continuation of the general election or part of it, made necessary by the reason of the possible failure of any candidate to receive a majority vote, since this article authorizes the election to the named offices by plurality vote, without mentioning any requirement of popular election by majority vote. *Rockefeller v. Matthews*, 249 Ark. 341, 459 S.W.2d 110 (1970).

Cited: *State ex rel. Williams v. Karston*, 208 Ark. 703, 187 S.W.2d 327 (1945).

§ 4. Contested election.

Contested elections for Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General shall be determined by the members of both houses of the General Assembly, in joint session; who shall have exclusive jurisdiction in trying and determining the same, except as hereinafter provided in the case of special elections; and all such contests shall be tried and determined at the first session of the General Assembly after the election in which the same shall have arisen.

CASE NOTES

In General.

The office of Governor is a creation of

the Constitution, and the specific mode of contesting elections to that office is exclu-

sive of every other. *Baxter v. Brooks*, 29 Ark. 173 (1874).

Cited: *State ex rel. Williams v. Karston*,

208 Ark. 703, 187 S.W.2d 327 (1945);
Mears v. Hall, 263 Ark. 827, 569 S.W.2d 91 (1978).

§ 5. Qualifications of Governor.

No person shall be eligible to the office of Governor except a citizen of the United States, who shall have attained the age of thirty years, and shall have been seven years a resident of this State.

CASE NOTES

Cited: *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959).

§ 6. Governor, commander-in-chief of armed services.

The Governor shall be commander-in-chief of the military and naval forces of this State, except when they shall be called into the actual service of the United States.

Cross References. Governor as commander-in-chief on active duty outside state, Ark. Const. Amend. 6, § 4.

CASE NOTES

Cited: *Jones v. Clark*, 278 Ark. 119, 644 S.W.2d 257 (1983).

§ 7. Information and reports from departments.

He may require information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.

§ 8. Messages to General Assembly.

He shall give to the General Assembly, from time to time, and at the close of his official term, to the next General Assembly, information, by message, concerning the condition and government of the State; and recommend for their consideration such measures as he may deem expedient.

§ 9. Seal of State.

A seal of the State shall be kept by the Governor, used by him officially, and called the "Great Seal of the State of Arkansas."

CASE NOTES

Cited: *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

§ 10. Grants and commissions.

All grants and commissions shall be issued in the name, and by the authority, of the State of Arkansas; sealed with the great seal of the State; signed by the Governor, and attested by the Secretary of State.

CASE NOTES

Cited: Chism v. Martin, 57 Ark. 83, 20 S.W. 809 (1892).

§ 11. Incompatible offices.

No member of Congress, or other person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided.

§ 12. President of Senate succeeding to Governor's office.

In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the State, or other disability of the Governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, or a Governor elected and qualified, shall devolve upon, and accrue, to the President of the Senate.

Publisher's Notes. This section has probably been superseded by Ark. Const. Amend. 6, § 4.

RESEARCH REFERENCES

Ark. L. Rev. Wills, Constitutional Crisis: Can the Governor (or Other State Officeholder) Be Removed from Office in a	Court Action after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.
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CASE NOTES

Cited: Bryant v. English, 311 Ark. 187, 843 S.W.2d 308 (1992).

§ 13. Speaker of House succeeding to office of Governor.

If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State; the Speaker of the House of Representatives shall, in like manner, administer the government.

Publisher's Notes. This section has probably been superseded by Ark. Const. Amend. 6, § 5.

CASE NOTES

Cited: *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913); *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992).

§ 14. Election to fill vacancy.

Whenever the office of Governor shall have become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within twelve months next before the expiration of the term of office for which the late Governor shall have been elected, the President of the Senate or Speaker of the House of Representatives, as the case may be, exercising the powers of Governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days, previous notice thereof, which election shall be governed by the same rules prescribed for general elections of Governor as far as applicable; the returns shall be made to the Secretary of State, and the acting Governor, Secretary of State and Attorney General shall constitute a board of canvassers, a majority of whom shall compare said returns and declare who is elected; and if there be a contested election, it shall be decided as may be provided by law.

Publisher's Notes. This section may have been superseded, in part, by Ark. Const. Amend. 6, §§ 4, 5.

CASE NOTES

Construction.

Section 7-7-105 does not conflict with this section, Ark. Const. Amend. 6, § 2, or Ark. Const. Amend. 6, § 5. *Stratton v. Priest*, 326 Ark. 469, 932 S.W.2d 321 (1996).

Cited: *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913); *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992).

§ 15. Approval of bills — Vetoes.

Every bill which shall have passed both houses of the General Assembly, shall be presented to the Governor; if he approve it, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it originated; which house shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house, shall agree to pass the bill, it shall be sent, with the objections, to the other house; by which, likewise, it shall be reconsidered; and, if approved by a majority of the whole number elected to that house, it shall be a law; but in such cases the vote of both houses shall be determined by "yeas and nays;" and the names of the members voting for or against the bill, shall be entered on the journals. If any bill shall not be returned by the Governor within five days, Sundays

excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it; unless the General Assembly, by their adjournment, prevent its return; in which case it shall become a law, unless he shall file the same, with his objections, in the office of the Secretary of State, and give notice thereof, by public proclamation, within twenty days after such adjournment.

Cross References. Authentication, unsigned or vetoed laws, §§ 10-2-116, 10-2-117.

CASE NOTES

ANALYSIS

In general.

Adjournment preventing return.

Becoming law without Governor's signature.

Computation of time.

Presentation to Governor.

—Initiated bill.

Presumption of compliance.

Receipt by Governor.

Resolution proposing amendment.

Statement of objections.

In General.

Upon being signed by the Governor, a bill becomes the law, and it is not subject to veto thereafter. It is not necessary for the Governor to report his approval to the General Assembly or file it with the Secretary of State. *Powell v. Hayes*, 83 Ark. 448, 104 S.W. 177 (1907).

Parol evidence, extrinsic of legislative records to the effect that a bill had been approved, could not overcome the legislative record that it had been vetoed. *Arkansas State Fair Ass'n v. Hodges*, 120 Ark. 131, 178 S.W. 936 (1915).

Adjournment Preventing Return.

Where legislature adjourned at noon on Thursday, March 14, and bill was received by Governor at 3:27 P.M. on Friday, March 8, and he did not sign it, bill did not become law since Governor was prevented from returning it within five-day period by legislature's adjournment. *State ex rel. Hebert v. Hall*, 228 Ark. 500, 308 S.W.2d 828 (1958).

Becoming Law Without Governor's Signature.

A bill which becomes a law without the Governor's signature, as provided in this section, does so upon the expiration of the

five-day period rather than on the effective date specified in the bill, and a bill may become a law prior to the time it becomes operative or effective as such. *Fletcher v. Bryant*, 243 Ark. 864, 422 S.W.2d 698 (1968).

Computation of Time.

In computation of time, first day is to be excluded and last day included. *State ex rel. Hebert v. Hall*, 228 Ark. 500, 308 S.W.2d 828 (1958).

Presentation to Governor.

Bills need not be transmitted to the Governor before adjournment of the assembly. *Dow v. Beidelman*, 49 Ark. 325, 5 S.W. 297 (1887).

Bills must be presented to the Governor within 20 days after adjournment; but he may waive presentation and sign. *Monroe v. Green*, 71 Ark. 527, 76 S.W. 199 (1903); *Hunt v. State*, 72 Ark. 241, 79 S.W. 769 (1904).

It is not necessary that a bill be authenticated by the signatures of the presiding officers of the General Assembly before being presented to the Governor for his approval. *Simon v. State*, 86 Ark. 527, 111 S.W. 991 (1908).

—Initiated Bill.

A bill repealing an initiated bill adopted by a county fixing the salaries of its officers is required to be presented to the Governor for his approval or disapproval. *Whaley v. Independence County*, 212 Ark. 320, 205 S.W.2d 861 (1947).

Presumption of Compliance.

There is a presumption that this section is complied with. *Rice v. Lonoke-Cabot Rd. Imp. Dist. No. 11*, 142 Ark. 454, 221 S.W. 179 (1920).

When an enrolled statute is signed by

the Governor and deposited with the Secretary of State it raises the presumption that every requirement has been complied with, and this presumption is conclusive unless there is a record from which the court can take judicial knowledge of the contrary. *Whaley v. Independence County*, 212 Ark. 320, 205 S.W.2d 861 (1947).

Receipt by Governor.

Governor's receipt for bill showing time when it was received sufficiently established such fact. *State ex rel. Hebert v.*

Hall, 228 Ark. 500, 308 S.W.2d 828 (1958).

Resolution Proposing Amendment.

Governor cannot veto a resolution proposing a constitutional amendment. *Mitchell v. Hopper*, 153 Ark. 515, 241 S.W. 10 (1922).

Statement of Objections.

There is no requirement that the objections shall be written separately or upon a different instrument. *Dickinson v. Page*, 120 Ark. 377, 179 S.W. 1004 (1915).

§ 16. Concurrent orders or resolutions — Veto.

Every order or resolution in which the concurrence of both houses of the General Assembly may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

CASE NOTES

ANALYSIS

Concurrent resolutions.
Constitutional amendment.

Concurrent Resolutions.

Concurrent resolutions have the force of an effect of law only within the limited sphere incident to the work or legislation which the legislature may complete before its final adjournment, but they may not be

used in place of bills to enact laws. *Dickinson v. Johnson*, 117 Ark. 582, 176 S.W. 116 (1915).

Constitutional Amendment.

No veto is allowed of resolution proposing a constitutional amendment. *Mitchell v. Hopper*, 153 Ark. 515, 241 S.W. 10 (1922).

§ 17. Vetoes of items of appropriation bills.

The Governor shall have power to disapprove any item, or items, of any bill making appropriation of money, embracing distinct items; and the part or parts of the bill approved shall be the law; and the item or items of appropriations disapproved, shall be void unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

CASE NOTES

Void Items.

An appropriation bill returned by the governor with his approval except as to certain items which were marked "disapproved and vetoed" was in compliance

with Ark. Const., Art. 6, § 15 and the items so marked were void and without effect. *Dickinson v. Page*, 120 Ark. 377, 179 S.W. 1004 (1915).

§ 18. Pardoning power.

In all criminal and penal cases, except in those of treason and impeachment, the Governor shall have power to grant reprieves, commutations of sentence, and pardons, after conviction; and to remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons; and he may, in the recess of the Senate, respite the sentence until the adjournment of the next regular session of the General Assembly. He shall communicate to the General Assembly at every regular session each case of reprieve, commutation or pardon, with his reasons therefor; stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon or reprieve.

RESEARCH REFERENCES

UALR L.J. Seventeenth Annual Survey of Arkansas Law — Criminal Law, 17 UALR L.J. 448.

Hart & Dudley, Available Post-Trial Re-

lief After a State Criminal Conviction When Newly Discovered Evidence Established "Actual Innocence," 22 UALR L.J. 629.

CASE NOTES

ANALYSIS

In general.
Construction.
Appeal pending.
Bail bond.
Civil cases.
Commutation.
Conditional pardon.
Costs.
Effect of pardon.
Evidence of pardon.
Fines.
Infamy.
Lieutenant governor.
Limitation of pardoning power.
Parole.
Public office.
Procedural requirements.
Reduction of sentence.
Regulation by legislature.
Respite.
Suspension of sentence.

In General.

Review of sentences not in excess of statutory limits and where there is no error is not within the jurisdiction of the courts as the exercise of clemency is given to the executive branch. *Osborne v. State*, 237 Ark. 5, 371 S.W.2d 518 (1963); *Patterson v. State*, 253 Ark. 393, 486 S.W.2d 19

(1972); *Abbott v. State*, 256 Ark. 558, 508 S.W.2d 733 (1974).

The executive branch has the sole authority to grant clemency to deserving individuals. *Smith v. State*, 262 Ark. 239, 555 S.W.2d 569 (1977); *Coones v. State*, 280 Ark. 321, 657 S.W.2d 553 (1983).

Because the power to pardon is held by the Governor, courts have no authority to reduce a defendant's sentence on the basis that it is unduly harsh. *Shelton v. State*, 44 Ark. App. 156, 870 S.W.2d 398 (1994).

The power to exercise clemency is vested in the chief executive and not the courts. *Pickens v. Tucker*, 316 Ark. 811, 875 S.W.2d 835 (1994).

The Arkansas Constitution gives the power to grant clemency to no other individual as long as the Governor is within the state and in full possession of his faculties; if he does not exercise his power to grant or deny clemency, there is no one else able to do so, and no constitutional rights are abrogated because the Governor cannot be impartial or objective. *Pickens v. Tucker*, 851 F. Supp. 363 (E.D. Ark.), *aff'd*, 23 F.3d 1477 (8th Cir. 1994).

Construction.

This section, which grants clemency powers to the Governor, does not pro-

scribe, delineate procedure, or set up standards for the exercise of clemency; it is purely a matter of grace. *Pickens v. Tucker*, 851 F. Supp. 363 (E.D. Ark.), *aff'd*, 23 F.3d 1477 (8th Cir. 1994).

Appeal Pending.

The Governor has power to pardon a criminal while the latter's case is pending in the Supreme Court on appeal. *Cole v. State*, 84 Ark. 473, 106 S.W. 673 (1907).

Bail Bond.

The Governor has authority to remit a forfeited bail bond. *Tinkle v. State*, 230 Ark. 966, 328 S.W.2d 111 (1959).

Civil Cases.

The power to remit fines and forfeitures as well as the power to pardon is confined to criminal or penal cases after conviction or judgment and does not reach to granting general amnesties nor relief from civil penalties or forfeitures. *Hutton v. McCleskey*, 132 Ark. 391, 200 S.W. 1032 (1918); *Hood v. State*, 237 Ark. 332, 372 S.W.2d 588 (1963).

Where a person charged with a crime made bond and then failed to appear, and a forfeiture was taken on his bond and a jury trial had on the bond forfeiture, the trial by jury did not change the character of the proceedings from a criminal to a civil case and the Governor had the authority to remit the forfeiture of the bond. *Hood v. State*, 237 Ark. 332, 372 S.W.2d 588 (1963).

Commutation.

An instrument granting an indefinite furlough subject to revocation is in effect a conditional commutation which releases the punishment without removing guilt. *Williams v. Brents*, 171 Ark. 367, 284 S.W. 56 (1926).

Conditional Pardon.

A pardon granted upon condition that the convict leave the state and never return is not violative of the provision of Ark. Const., Art. 2, § 21 against banishment. *Ex parte Hawkins*, 61 Ark. 321, 33 S.W. 106 (1895).

Where a conditional pardon was granted and the condition subsequently broken, the pardon became of no effect and the former judgment was restored to its full force and effect. *Ex parte Brady*, 70 Ark. 376, 68 S.W. 34 (1902).

Costs.

A pardon does not discharge the convict from the costs of the prosecution. *Edwards v. State*, 12 Ark. 122 (1851) (decision under prior Constitution); *Villines v. State*, 105 Ark. 471, 151 S.W. 1023 (1912).

Effect of Pardon.

The effect of the pardon was to restore the convict at once to the right of liberty and citizenship. *Ex parte Hunt*, 10 Ark. 284 (1850) (decision under prior Constitution).

Pardon takes effect upon delivery. *Weigel v. McCloskey*, 113 Ark. 1, 166 S.W. 944 (1914).

Evidence of Pardon.

The best evidence of a pardon is the original or certified copy, and it was error to permit testimony of a witness whose competency was established by oral evidence of his pardon over objection of proposing council. *Redd v. State*, 65 Ark. 475, 47 S.W. 119 (1898).

Fines.

The Governor can remit fines after they have been paid to the sheriff if the amount has not been paid into the county treasury nor charged to the sheriff by the county court in auditing his account. *Fischel v. Mills*, 55 Ark. 344, 18 S.W. 237 (1892).

A general pardon exonerates from the payment of the fine and removes the criminal character of the judgment for costs which become no longer enforceable by imprisonment but only as a civil liability. *Ex parte Purcell*, 61 Ark. 17, 31 S.W. 738 (1895).

Infamy.

The common-law disability by infamy affecting qualification as witness and other legal disabilities may be removed by a pardon. *Werner v. State*, 44 Ark. 122 (1884).

Lieutenant Governor.

The Governor was held a biased determiner of defendant's clemency application by virtue of his representation of the State in defendant's appeal in 1977; accordingly, the Governor should be declared ineligible to determine the clemency issue, and the Lieutenant Governor should be the determiner, pursuant to Ark. Const. Amend. 6, § 5. *Pickens v. Tucker*, 316 Ark. 811, 875 S.W.2d 835 (1994).

Limitation of Pardoning Power.

The pardoning power of the Governor conferred by this section is not intended to permit such act of clemency to supersede the clear mandate of Ark. Const., Art. 5, § 9 so as to permit a person convicted of embezzlement of public money to hold public office. *Ridgeway v. Catlett*, 238 Ark. 323, 379 S.W.2d 277 (1964).

Parole.

Statute that provided for life imprisonment without parole did not violate this section. *Tanner v. State*, 259 Ark. 243, 532 S.W.2d 168 (1976).

Public Office.

A public officer convicted of a felony forfeits his office, which cannot be restored after pardon by the Governor. *State v. Carson*, 25 Ark. 469 (1869).

Procedural Requirements.

The Governor has absolute discretion in granting or denying executive clemency; however, the decision must be made after mandated statutory procedures have been completed. *Perry v. Brownlee*, 972 F. Supp. 480 (E.D. Ark. 1997).

Reduction of Sentence.

The court erred in reducing defendant's jury sentence from thirty to fifteen years as this section reserves the right to reduce sentences to the Governor. *Ashe v. State*, 57 Ark. App. 99, 942 S.W.2d 267 (1997), supplemental op., reh'g denied, 328 Ark. App. 116 (1997).

Regulation by Legislature.

The legislature may not deprive the Governor of his power to pardon by failure to exercise its power of regulation, and until the power to pardon is regulated by law, the Governor may exercise it according to his own discretion. *Baldwin v. Scoggin*, 15 Ark. 427 (1855) (decision under prior Constitution).

Regulating applications for pardon is within the legislative power and does not deprive the Governor of his power to pardon, and a pardon issued without complying with legislative regulation is invalid. *Horton v. Gillespie*, 170 Ark. 107, 279 S.W. 1020 (1926).

Respite.

Upon expiration of respite granted by the Governor, the circuit court must execute a commitment when the Supreme Court affirmed conviction and issued its mandate. *Scaife v. State*, 210 Ark. 544, 196 S.W.2d 902 (1946).

Suspension of Sentence.

Statute empowering the court to suspend sentence prior to commitment is not violative of this section. *Emerson v. Boyles*, 170 Ark. 621, 280 S.W. 1005 (1926); *Murphy v. State*, 171 Ark. 620, 286 S.W. 871 (1926).

Cited: *Hurst v. State*, 251 Ark. 40, 470 S.W.2d 815 (1971); *Nicholas v. State*, 268 Ark. App. 541, 595 S.W.2d 237 (Ct. App. 1980); *Richley v. Gaines*, 860 F. Supp. 636 (E.D. Ark. 1994).

§ 19. Extraordinary sessions of General Assembly — Calling — Purposes.

The Governor may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or contagious disease; and he shall specify in his proclamation the purpose for which they are convened; and no other business than that set forth therein shall be transacted until the same shall have been disposed of; after which they may, by a vote of two-thirds of all the members elected to both houses, entered upon their journals, remain in session not exceeding fifteen days.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law:
Public Law, 4 UALR L.J. 243.

CASE NOTES

ANALYSIS

In general.
Construction.
Purpose.
Proclamation.

In General.

There are only two types of sessions of the General Assembly in Arkansas — the regular biennial sessions provided by Ark. Const., Art. 5, §§ 5 and 17 and the sessions which the Governor by proclamation convenes under this section, which have come to be known as special sessions. *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

To allow the legislature to extend itself indefinitely and reconvene to consider any and all matters it desired would be an infringement on the constitutional authority granted the Governor to call the legislature into special session for specific matters. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

Construction.

This provision should be given a practical and liberal construction to carry out its evident purpose. *State Note Board v. State ex rel. Attorney Gen.*, 186 Ark. 605, 54 S.W.2d 696 (1932); *McCarroll v. Clyde Collins Liquors*, 198 Ark. 896, 132 S.W.2d 19 (1939).

Purpose.

The legislature may act freely within the call upon all or any subject specified, and every presumption will be in favor of the regularity of the action, but when the court determines that the act is not within the purposes specified, it is the court's duty to declare the act invalid. *Jones v. State*, 154 Ark. 288, 242 S.W. 377 (1922);

Sims v. Weldon, 165 Ark. 13, 263 S.W. 42 (1924).

General Assembly may consider not only the legislation specifically mentioned and set forth in the proclamation, but such other legislation as may necessarily or incidentally arise out of that call, such as any necessary detail in accomplishing the purpose designated by the call, and a wide range will be conceded to the legislature in deciding what comes within the purview of the call. *Pope v. Oliver*, 196 Ark. 394, 117 S.W.2d 1072 (1938); *McCarroll v. Clyde Collins Liquors*, 198 Ark. 896, 132 S.W.2d 19 (1939).

Act by special session increasing drainage district's benefit assessments by 50 percent was authorized by Governor's call authorizing the General Assembly to ratify, confirm, and validate special or local improvement districts and to enlarge the powers thereof. *Burton v. Harris*, 202 Ark. 696, 152 S.W.2d 529 (1941).

The purpose of this section is to prevent the enactment of laws which do not have any connection or relation to the subjects embraced in the governor's proclamation. It does not have as its purpose the prohibition of laws which necessarily or incidentally arise out of the subjects described in the call; on the contrary, such bills arising out of the call may be validly enacted. *First Nat'l Bank v. Clinton*, 304 Ark. 411, 802 S.W.2d 928 (1991).

Proclamation.

Court takes judicial notice of contents of Governor's proclamation. *Booe v. Road Imp. Dist. No. 4*, 141 Ark. 140, 216 S.W. 500 (1919).

Cited: *Spa Kennel Club, Inc. v. Dunaway*, 241 Ark. 51, 406 S.W.2d 128 (1966); *Wells v. Purcell*, 267 Ark. 456, 592 S.W.2d 100 (1979).

§ 20. Power to adjourn General Assembly.

In cases of disagreement between the two houses of the General Assembly, at a regular or special session, with respect to the time of adjournment, the Governor may, if the facts be certified to him by the presiding officers of the two houses, adjourn them to a time not beyond the day of their next meeting; and on account of danger from an enemy or disease, to such other place of safety as he may think proper.

CASE NOTES

Cited: Wells v. Purcell, 267 Ark. 456, 592 S.W.2d 100 (1979).

§ 21. Duties of Secretary of State.

The Secretary of State shall keep a full and accurate record of all the official acts and proceedings of the Governor; and, when required, lay the same with all papers, minutes and vouchers relating thereto, before either branch of the General Assembly. He shall also discharge the duties of Superintendent of Public Instruction, until otherwise provided by law.

Publisher's Notes. The elementary and secondary education system is now administered by the State Board of Edu-

cation and its two directors. See § 6-11-101 et seq.

CASE NOTES

In General.

The Secretary of State is made the custodian, and the only one, of records pertaining to the Governor's office, and his

office is the only place where record evidence of the official acts of the Governor may be found. Powell v. Hayes, 83 Ark. 448, 104 S.W. 177 (1907).

§ 22. Duties of executive officers in general — Dual office holding prohibited — Vacancies — Filling.

The Treasurer of State, Secretary of State, Auditor of State, and Attorney-General shall perform such duties as may be prescribed by law; they shall not hold any other office or commission, civil or military, in this State or under any State, or the United States, or any other power, at one and the same time; and in case of vacancy occurring in any of said offices, by death, resignation or otherwise, the Governor shall fill said office by appointment for the unexpired term.

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey, Jeffrey, Nelson, Nunnally and Robertson, Constitutional Law, 7 UALR L.J. 179.

CASE NOTES

ANALYSIS

Attorney general.
Holding other commission.
Treasurer.

Attorney General.

The Attorney General had the power and duty to file for an injunction enjoining the operation of a bookmaking establish-

ment as a public nuisance. State ex rel. Williams v. Karston, 208 Ark. 703, 187 S.W.2d 327 (1945).

The Constitution has given to the legislature right and power to prescribe the duties of the Attorney General of the state. Morley v. Berg, 216 Ark. 562, 226 S.W.2d 559 (1950); Parker v. Murry, 221 Ark. 554, 254 S.W.2d 468 (1953).

Holding Other Commission.

This section, which prohibits officers of the United States Reserve from serving as constitutional officers, does not violate federal equal protection guarantees. *Jones v. Clark*, 278 Ark. 119, 644 S.W.2d 257 (1983).

Treasurer.

The Constitution clearly empowers the

legislature to decide whether the State Treasurer shall be required to receive all state funds. *Gipson v. Ingram*, 215 Ark. 812, 223 S.W.2d 595 (1949).

Cited: *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

§ 23. Filling vacancies in other offices.

When any office, from any cause, may become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill the same by granting a commission, which shall expire when the person elected to fill said office, at the next general election, shall be duly qualified.

CASE NOTES

ANALYSIS

Circuit judge.
Elective officers.
Expiration of commission.
Mayor.

Circuit Judge.

The fact of the Constitution having provided in Ark. Const., Art. 7, § 21 for appointment by attorneys of a special judge to keep the court going does not prevent the Governor from making a temporary appointment of a circuit judge. *State ex rel. Att'y Gen. v. Stevenson*, 89 Ark. 31, 116 S.W. 202 (1909).

Elective Officers.

This section relates only to elective of-

fices. *Cox v. State*, 72 Ark. 94, 78 S.W. 756 (1904).

Expiration of Commission.

All commissions issued by the Governor expire not later than next general election. *Means v. Terral*, 145 Ark. 443, 225 S.W. 601 (1920).

Mayor.

This section has no application to a vacancy occurring in the office of mayor. *Hogins v. Bullock*, 92 Ark. 67, 121 S.W. 1064 (1909).

Cited: *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959); *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

ARTICLE 7

JUDICIAL DEPARTMENT

SECTION.

- 1 — 18. [Repealed.]
19. Circuit clerks — Election — Term of office — Ex-officio duties — County clerks elected in certain counties.
- 20 — 22. [Repealed.]
23. Charge to juries.
24. [Repealed.]
25. [Repealed.]
26. Punishment of indirect contempt provided for by law.

SECTION.

27. Removal of county and township officers — Grounds.
28. County courts — Jurisdiction — Single judge holding court.
29. County judge — Election — Term — Qualifications.
30. Quorum court — County judge and justices of peace.
31. County court — Terms.
32. [Repealed.]

SECTION.

33. Appeals from county and common pleas courts.
34. [Repealed.]
35. [Repealed.]
36. Special judges of county or probate courts.
37. Compensation of county judge — Powers during absence of circuit judge.
38. Justices of the peace — Election — Term — Oath.
39. [Repealed.]
40. [Repealed.]
41. Qualifications of justice of peace.
42. [Repealed.]

SECTION.

43. Corporation courts — Jurisdiction. [Repealed effective January 1, 2005.]
44. [Repealed.]
45. [Repealed.]
46. County executive officers — Compensation of county assessor.
47. Constables — Term of office — Certificate of election.
48. Commissions of officers.
49. Style of process and of indictments.
50. [Repealed.]
51. Appeals from county or municipal allowances — Bond.
52. Appeals in election contests.

Publisher's Notes. Acts 1989, No. 761, § 1, provided: "(a) From and after the passage of this act, the 'Arkansas Judicial Department' shall be known and designated as the 'Administrative Office of the Courts', and the 'Executive Secretary' of the Arkansas Judicial Department shall be known as the 'Director' of the Administrative Office of the Courts.

"(b) Any and all statutes of the State of Arkansas now in force in which the institution now designated as 'Arkansas Judicial Department' shall be construed to refer to the 'Administrative Office of the Courts.' Said 'Administrative Office of the

Courts' shall succeed to all rights and benefits and assume all the responsibilities of said 'Arkansas Judicial Department.'

"(c) Any and all statutes of the State of Arkansas now in force in which the official now designated as 'executive secretary' of the Arkansas Judicial Department shall be construed to refer to the 'director' of the Administrative Office of the Courts. Said 'director' shall succeed to all rights and benefits and assume all the responsibilities of said 'executive secretary.'" See § 16-10-102.

RESEARCH REFERENCES

Am. Jur. 16 Am. Jur. 2d, Constitutional Law, § 306 et seq.

C.J.S. 16 C.J.S., Constitutional Law, § 169 et seq.

UALR L.J. Gingerich, Out of the Morass: The move to State Funding of the Arkansas Court System, 17 UALR L.J. 249.

CASE NOTES

Power to Vest Jurisdiction.

There is no express constitutional limitation upon the General Assembly's power to vest jurisdiction in Municipal Courts

beyond the geographical limits of the municipalities. *Ashworth v. State*, 306 Ark. 570, 816 S.W.2d 597 (1991).

§§ 1. — 18. [Repealed.]

Publisher's Notes. These sections, concerning judicial power vested in courts, Supreme Court, increase of number of judges, jurisdiction and powers of

Supreme Court, jurisdiction to issue quo warranto, qualifications of judges of Supreme Court, clerk and reporter, place of holding court, special judges, compensa-

tion of Supreme Court judges and holding dual office holding, circuit court jurisdiction, terms of circuit court, judicial circuits, superintending control and appellate jurisdiction over inferior courts, power to issue writs, equity jurisdiction, qualifications of circuit judges, election of

circuit judges, term of office, compensation of circuit court judges, and holding dual office, were repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001. Ark. Const., Art. 7, § 9, concerning special judges, had been previously repealed by the passage of Ark. Const. Amend. 77, § 3.

RESEARCH REFERENCES

Ark. L. Rev. Minimum Standards of Judicial Administration — Arkansas, 5 Ark. L. Rev. 1.

Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

Killenbeck, Nothing That We Can Do? Or, Much Ado About Nothing? Some Thoughts on Bates v. Bates, Equity, and Domestic Abuse in Arkansas, 43 Ark. L. Rev. 733.

Killenbeck, And Then They Did ...? Abusing Equity in the Name of Justice, 44 Ark. L. Rev. 235.

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

Survey — Family Law, 10 UALR L.J. 577.

Gitelman, The Separation of Law and Equity and the Arkansas Chancery Courts: Historical Anomalies and Political Realities, 17 UALR L.J. 215.

CASE NOTES

ANALYSIS

In general.

Administrative agencies.

Appeal.

Chancery courts.

Contempt.

County courts.

Creation of courts.

Delegation of authority.

Disqualification of justices.

Justices of peace.

Municipal courts.

Right to jury trial.

Rules of court procedure.

In General.

The judicial power of Arkansas is in the appellate, trial, and inferior courts. *Ball v. Roberts*, 291 Ark. 84, 722 S.W.2d 829 (1987).

Administrative Agencies.

The department of public utilities, when passing upon the rates established by public utilities, is performing primarily a legislative function and does not therefore act judicially. *Fort Smith v. Department of Pub. Utils.*, 195 Ark. 513, 113 S.W.2d 100 (1938).

A certificate of indebtedness issued for the collection of an assessment deter-

mined to be owing in a hearing before the Commission of Revenues (now Department of Finance and Administration) was subject to execution after the expiration of the time permitted for an appeal to the chancery court. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942).

Statute providing for settlement of wage disputes by the Commissioner of Labor (now Director of Department of Labor) was not an unconstitutional delegation of judicial power. *Thornbrough v. Williams*, 225 Ark. 709, 284 S.W.2d 641 (1955).

Statute requiring matters be presented to the public service commission in the first instance and the courts on appeal was not violative of this section since plaintiff had a full adequate, complete, and expeditious remedy. *McGehee v. Mid S. Gas Co.*, 235 Ark. 50, 357 S.W.2d 282 (1962).

Appeal.

An act which provided for appointment by the court of a tribunal for appraisal of property under condemnation without appeal therefrom was violative of this section. *Hoxie v. Gibson*, 155 Ark. 338, 245 S.W. 332 (1922).

Chancery Courts.

The legislature was given power to es-

establish chancery courts, but it can confer upon them only such jurisdiction as a court of chancery could exercise at the time the Constitution was adopted. *Hester v. Bourland*, 80 Ark. 145, 95 S.W. 992 (1906).

Chancery courts may acquire jurisdiction upon well established grounds of equitable interference. *Walls v. Brundidge*, 109 Ark. 250, 160 S.W. 230 (1913); *Smith v. Whitmire*, 273 Ark. 120, 617 S.W.2d 845 (1981).

The state may properly seek to protect the community by asking the aid of a court of equity to enjoin the operation of a bookmaking establishment as a public nuisance where the criminal law enforcement agencies have broken down, thereby rendered the remedy at law to be inadequate and incomplete. *State ex rel. Williams v. Karston*, 208 Ark. 703, 187 S.W.2d 327 (1945).

Ark. Const., Art. 7, § 44, in recognizing the existence of the Pulaski county chancery court and permitting the General Assembly to deal with its continued existence, cannot be reasonably read to create a new class of constitutional courts so as to deprive the General Assembly of the express powers created by this section. *Weber v. Pryor*, 259 Ark. 153, 531 S.W.2d 708 (1976).

Contempt.

Although the Supreme Court's jurisdiction is appellate in nature, and although not mentioned in S. Ct. & Ct. App. R. 6-5, the Supreme Court has exercised original jurisdiction where its contempt powers were at issue. *Jackson v. Tucker*, 325 Ark. 318, 927 S.W.2d 336 (1996).

County Courts.

The exercise of exclusive jurisdiction over juveniles is not a permissible function of the county courts under this section and Ark. Const., Art. 7, § 28; but since county courts have exercised jurisdiction over juveniles in the past under color of law, their proceedings and judgments may not be collaterally attacked. *Walker v. Arkansas Dep't of Human Servs.*, 291 Ark. 43, 722 S.W.2d 558 (1987).

Creation of Courts.

Act establishing juvenile court within the jurisdiction of the County Court does not offend against this section. *Ex parte*

King, 141 Ark. 213, 217 S.W. 465 (1919); *Robins v. Arkansas Social Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981).

The General Assembly does not have the power to create courts not specifically set out in the Constitution. *Ward School Bus Mfg., Inc. v. Fowler*, 261 Ark. 100, 547 S.W.2d 394 (1977).

This section, which empowers the General Assembly with the authority to create town and city municipal corporation courts, includes the authority to create county municipal corporation courts. *Pulaski County Mun. Court v. Scott*, 272 Ark. 115, 612 S.W.2d 297 (1981).

Delegation of Authority.

The letter-opinion of the judge's law clerk informing the defendant that his petition for postconviction relief was denied was invalid because a trial judge may not delegate his judicial authority to a law clerk, and the General Assembly has not attempted to give law clerks the power to decide cases. *Brown v. State*, 290 Ark. 289, 718 S.W.2d 937 (1986).

Disqualification of Justices.

Ark. Const., Art. 7, § 9, in pertinent part, provided that, when all or any of the justices were disqualified, the governor was to immediately commission the requisite number of men (or women) learned in the law to sit in the trial or determination of the supreme court's cases; thus, the Arkansas Supreme Court did not direct who the governor commissioned to perform his duties as a justice, as petitioner suggested in his motion, which sought refusal of justices because of his proposed amendment limiting salaries and other benefits of public servants, including those of the justices. *White v. Priest*, 348 Ark. 135, 73 S.W.3d 572 (2002), cert. denied, 537 U.S. 949, 123 S. Ct. 381, 154 L. Ed. 2d 295 (2002).

Justices of Peace.

It is within the power of the legislature to abolish the jurisdiction of justices of the peace in misdemeanor cases. *State ex rel. Moose v. Woodruff*, 120 Ark. 406, 179 S.W. 813 (1915).

Act authorizing creation of municipal courts deprived the justices of the peace of jurisdiction in misdemeanor cases in the townships affected by the act, but their jurisdiction to sit as examining courts and bind over offenders in felony cases to

await the action of the grand jury and to issue all process necessary to an exercise of that jurisdiction remained unimpaired and unchanged. *Albright v. Karston*, 206 Ark. 307, 176 S.W.2d 421 (1943).

Municipal Courts.

The jurisdiction of municipal courts is not necessarily restricted to the territorial limits of the municipality. *State ex rel. Moose v. Woodruff*, 120 Ark. 406, 179 S.W. 813 (1915).

The legislature is authorized by this section to vest such jurisdiction in the municipal courts as it thinks necessary. *Johnson v. State*, 200 Ark. 969, 141 S.W.2d 849 (1940).

Municipal courts are without jurisdiction to try felony cases. *Craig v. State*, 314 Ark. 585, 863 S.W.2d 825 (1993).

Right to Jury Trial.

There is no entitlement to a jury trial in a municipal court, but when a conviction is appealed from a municipal court to a circuit court, the case is tried *de novo*, and the appellant is entitled to a trial by jury. *State v. Roberts*, 321 Ark. 31, 900 S.W.2d 175 (1995).

Rules of Court Procedure.

This section does not expressly or by

implication confer on the Supreme Court exclusive authority to set rules of court procedure. *Jackson v. Ozment*, 283 Ark. 100, 671 S.W.2d 736 (1984).

Cited: *United Loan & Inv. Co. v. Chilton*, 225 Ark. 1037, 287 S.W.2d 458 (1956); *Rockefeller v. Hogue*, 246 Ark. 712, 439 S.W.2d 805 (1969); *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974); *Carter v. Clausen*, 263 Ark. 344, 565 S.W.2d 17 (1978); *Meyers v. State*, 271 Ark. 886, 611 S.W.2d 514 (1981); *International Paper Co. v. McBride*, 12 Ark. App. 400, 678 S.W.2d 375 (1984); *City of Cabot v. Thompson*, 286 Ark. 395, 692 S.W.2d 235 (1985); *Arkansas Dep't of Human Servs. v. Ross-Lawhon*, 290 Ark. 578, 721 S.W.2d 658 (1986); *Urich v. State*, 293 Ark. 246, 737 S.W.2d 155 (1987); *Hutton v. Savage*, 298 Ark. 256, 769 S.W.2d 394 (1989); *Sexton v. Arkansas Supreme Court Comm. on Professional Conduct*, 299 Ark. 439, 774 S.W.2d 114 (1989); *Union Nat'l Bank v. Nichols*, 305 Ark. 274, 807 S.W.2d 36 (1991); *Hall v. Pulaski County Chancery Court*, 320 Ark. 593, 898 S.W.2d 46 (1995).

§ 19. Circuit clerks — Election — Term of office — Ex-officio duties — County clerks elected in certain counties.

The clerks of the circuit courts shall be elected by the qualified electors of the several counties for the term of two years, and shall be ex-officio clerks of the county and probate courts and recorder; provided, that in any county having a population exceeding fifteen thousand inhabitants, as shown by the last Federal census, there shall be elected a county clerk, in like manner as the clerk of the circuit court, and in such case the county clerk shall be ex-officio clerk of the probate court of such county until otherwise provided by the General Assembly. [As amended by Const. Amend. 24, § 3.]

Publisher's Notes. The provisions of this section limiting the election of a separate county clerk to those counties having a population exceeding 15,000 inhabitants were abolished by Ark. Const. Amend. 41.

Ark. Const. Amend. 24, § 3, added the words "until otherwise provided by the General Assembly."

Amendment 80 to the Arkansas Constitution, adopted by voter referendum and

effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

RESEARCH REFERENCES

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

CASE NOTES

ANALYSIS

Circuit clerk and recorder.
Effect of amendment.
—Population requirement.
Probate clerk.

Circuit Clerk and Recorder.

The office of circuit clerk and recorder is but one. *Durden v. Greenwood Dist.*, 73 Ark. 305, 83 S.W. 1048 (1904).

Effect of Amendment.

County clerks, as ex officio clerks of the probate court, continue as such under the amendments until otherwise provided by the General Assembly. *Lewis v. Smith*, 198 Ark. 244, 129 S.W.2d 229 (1939).

Statute creating office of county clerk for Franklin County under the authority of this section violated Ark. Const. Amend. No. 14 since act was local and not general. *Huggins v. Wacaster*, 223 Ark. 390, 266 S.W.2d 58 (1954).

—Population Requirement.

Const., Amend. 41, abolishing population requirement for election of county clerk, requires enabling legislation since the word “may” is used in amendment; hence, plaintiff elected county clerk at 1952 election at which time population of county had declined to less than 15,000 was not entitled to office. *Huggins v. Wacaster*, 223 Ark. 390, 266 S.W.2d 58 (1954).

Probate Clerk.

Act consolidating jurisdiction of the probate court with the chancery court was held not to substitute circuit clerk for county clerk as ex officio clerk of probate court. *Lewis v. Smith*, 198 Ark. 244, 129 S.W.2d 229 (1939).

Cited: *Childers v. DuVal*, 69 Ark. 336, 63 S.W. 802 (1901); *Montgomery v. Little*, 69 Ark. 392, 63 S.W. 993 (1901).

§§ 20. — 22. [Repealed.]

Publisher's Notes. These sections, concerning disqualification of judges, special judges of circuit courts, and exchange of circuits, were repealed by Ark. Const.

Amend. 80, § 22(A), effective July 1, 2001. Ark. Const., Art. 7, §§ 21 and 22, had been previously repealed by the passage of Ark. Const. Amend. 77, § 3.

CASE NOTES

ANALYSIS

In general.
Administrative boards.
Discretion of court.
Disqualifying interest.
—Counsel in case.
—Expense account approval.
—Party.
—Relationship.
—Salary approval.
Interest not disqualifying.
—Counsel in case.
—Exchange of circuits.
—Former prosecutor.
—Post conviction proceedings.

—Relationship.
Prejudice.
Special justices.
Waiver.

In General.

It is too late after judgment to object to the judge's disqualification. *Pettigrew v. Washington County*, 43 Ark. 33 (1884); *Washington Fire Ins. Co. v. Hogan*, 139 Ark. 130, 213 S.W. 7 (1919).

The interest which is disqualifying under this section is a personal proprietary or pecuniary interest or one affecting the individual rights of the judge, and the liability, gain, or relief to the judge must

turn on the outcome of the suit. *Foreman v. Marianna*, 43 Ark. 324 (1884); *Osborne v. Board of Imp.*, 94 Ark. 563, 128 S.W. 357 (1910); *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

Mandamus is a proper remedy to prevent a judge from presiding in a prosecution in which he himself is interested. *Copeland v. Huff*, 222 Ark. 420, 261 S.W.2d 2 (1953).

Absent a statutory provision to the contrary, a determination of disqualification will not prevent a judge from reassuming full jurisdiction if the disqualification has been removed. *Matthews v. State*, 313 Ark. 327, 854 S.W.2d 339 (1993).

Administrative Boards.

This section has reference to courts and those exercising judicial functions and does not apply to board of directors of levee district. *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912).

Discretion of Court.

Disqualification is discretionary with the judge himself and he will not be reversed absent some abuse of that discretion. *Woods v. State*, 278 Ark. 271, 644 S.W.2d 937 (1983); *Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453 (1983).

Both this section and Arkansas Code of Judicial Conduct Canon 3(c) provide that judges must refrain from presiding over cases in which they might be interested and avoid all appearances of bias; on appeal, a judge's decision not to recuse is affirmed when there is no abuse of discretion. *Reel v. State*, 318 Ark. 565, 886 S.W.2d 615 (1994).

Disqualifying Interest.

—Counsel in Case.

The provision concerning disqualification of judge for having acted as counsel relates to some case in which the judge participated before assuming duties as a judge. *Bledsoe v. State*, 130 Ark. 122, 197 S.W. 17 (1917).

A judge who, while serving as prosecuting attorney before going on the bench, has signed an information or indictment in a criminal case, has been "of counsel" in such case and is disqualified to preside in any trial or hearing therein. *Fisher v. State*, 206 Ark. 177, 174 S.W.2d 446 (1943).

Judge was never "of counsel" in case before him. *Green v. State*, 21 Ark. App. 80, 729 S.W.2d 17 (1987).

—Expense Account Approval.

County court, as county judge, being ex officio road commissioner, was held not competent to pass upon road commissioner's expense accounts as they involve exercise of judicial discretion, and allowances thus made are void. *Ladd v. Stubblefield*, 195 Ark. 261, 111 S.W.2d 555 (1937); *Ward v. Farrell*, 221 Ark. 363, 253 S.W.2d 353 (1952).

—Party.

The word "party" should not be construed in a technical sense to mean party to the record, but should mean any one pecuniarily interested in the result of the suit. *Johnson v. State*, 87 Ark. 45, 112 S.W. 143 (1908).

A judge who was the victim of alleged criminal libel by publisher was disqualified from presiding as judge in proceedings under several indictments returned against the publisher since he himself was a party within the necessary degree. *Copeland v. Huff*, 222 Ark. 420, 261 S.W.2d 2 (1953).

Where the impaneling of a grand jury was sought to investigate the judge, the judge should have disqualified himself prior to entering an order for an exchange of circuits. *State v. George*, 250 Ark. 968, 470 S.W.2d 593 (1971).

—Relationship.

It is not proper to call upon a judge to start an investigation into the fees of attorney who may be kinsmen of his in order to discover disqualification. *Dunbar v. Wallace*, 84 Ark. 231, 105 S.W. 257 (1907).

A person convicted of murder was entitled to a new trial when he was in ignorance at the time of the trial of the fact that the judge's wife was a cousin of the victim. *Byler v. State*, 210 Ark. 790, 197 S.W.2d 748 (1946).

Where one spouse's relationship with a judge comes within the prohibition of this section and §§ 16-13-214, 16-13-312, 16-14-103, 16-15-111, or 16-19-206, the other spouse shares the same degree of relationship by affinity to the judge. Thus, circuit judge who was first cousin to wife of owner of defendant publishing company was related in the second degree of consanguin-

ity, which relationship came within the prohibitions in this section and § 16-13-214, and the judge should have recused himself. *Morton v. Benton Publishing Co.*, 291 Ark. 620, 727 S.W.2d 824 (1987).

Appellee's motion for vacatur, treated as a Letter of Suggestion of Disqualification under S. Ct. & Ct. App. Rule 27, alleging that the Chief Justice had a social relationship with an attorney involved in this case and, because of this relationship, that all members of the Arkansas Supreme Court should be disqualified, was denied. *First Pyramid Life Ins. Co. of Am. v. Stoltz*, 312 Ark. 516, 849 S.W.2d 525 (1993).

Recusal was not required where defense counsel asserted that the trial judge knew someone connected with another criminal case that involved the defendant but it was never established that such was true and there was no connection established between the defendant's case and the other case. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998).

—Salary Approval.

The judges of the Supreme Court are disqualified in a case involving the passage of the general appropriation bill upon which their salaries depend. *Ferrell v. Keel*, 103 Ark. 96, 146 S.W. 494 (1912).

Interest Not Disqualifying.

Where court directed that defendant, who was on bail, be taken into custody during the trial when it was brought to the court's attention that he had indicated that he might attempt to fix or tamper with the petit jury, there was no ground for disqualification because of such fact. *Reaves v. State*, 229 Ark. 453, 316 S.W.2d 824 (1958), cert. denied, 359 U.S. 944, 79 S. Ct. 723, 3 L. Ed. 2d 676 (1959).

Judge passing on compromise settlement between injured employee and tortfeasors in which insurance carrier had subrogation rights did not have a disqualifying interest in the case because he had pending an action for injury to his own hand involving the same liability carrier. *Liberty Mut. Ins. Co. v. Billingsley*, 256 Ark. 947, 511 S.W.2d 476 (1974).

A chancellor was not disqualified in hearing suit for an injunction against the operation of a motorcycle racetrack by the fact that he lived within two miles of the track or by the fact that he had been an

incorporator for a competing racetrack where he had disposed of his interest five years before and did not know who was operating such track. *Baker v. Odom*, 258 Ark. 826, 529 S.W.2d 138 (1975).

The fact that the final judgment in a personal injury action was typed on paper which had the name and address of the prevailing party's attorney printed on the margin did not show implied bias on the part of the trial judge. *Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453 (1983).

Motion for recusal was properly denied where the trial judge had no interest in underlying action beyond that of general interest which any other taxpayer or property owner had and, thus, he did not have a personal or pecuniary interest that justified disqualification. *Worth v. Benton County Circuit Court*, 351 Ark. 149, 89 S.W.3d 891 (2002).

The fact the victim's sister was an employee of the trial judge's former law firm, and that defendant's counsel had ran against the judge in a past election, intended to run against the judge again, and had been jailed for contempt by the judge in the past, was not grounds for the judge's recusal. *Holder v. State*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 525 (Oct. 9, 2003).

—Counsel in Case.

Mere allegation that the chancellor acted as counsel in similar litigation many years before between different parties is not sufficient to put his qualifications in issue. *Andrews v. Lauener*, 229 Ark. 894, 318 S.W.2d 805 (1958).

—Exchange of Circuits.

A circuit judge who has temporarily exchanged circuits with another judge under the regulations prescribed by law is not disqualified to preside at the trial of a cause there pending because of the disqualification of the regular judge. *Evans v. State*, 58 Ark. 47, 22 S.W. 1026 (1893).

—Former Prosecutor.

Recusal was not warranted where the judge who served as prosecutor during the investigation of defendant was not the prosecutor at the time the defendant was arrested. *Lofton v. State*, 57 Ark. App. 226, 944 S.W.2d 131 (1997).

Recusal was not required by the fact that the judge, a former prosecutor, had

previously prosecuted defendant, nor was recusal required by the remand of defendant's initial conviction, the judge's decision to increase bond, or the judge's threat to have defendant's mouth taped closed to prevent disruption of a pretrial hearing. *Irvin v. State*, 345 Ark. 541, 49 S.W.3d 635 (2001).

—Post Conviction Proceedings.

The practice of having the trial judge hear the post conviction petition proceedings does not violate the spirit, nor the letter, of this constitutional prohibition against a judge presiding in the trial where he has presided in any inferior court. *Woods v. State*, 278 Ark. 271, 644 S.W.2d 937 (1983).

—Relationship.

Provision for disqualification of judge if related to either party did not operate to preclude enactment of law providing for disqualification of judge because of relationship to attorneys in the case. *Black v. Cockrill*, 239 Ark. 367, 389 S.W.2d 881 (1965).

Murder defendant who pleaded guilty after the death penalty was waived was not prejudiced by a father-in-law/son-in-law relationship between the judge and one of defendant's court-appointed counsel. *Fuller v. State*, 256 Ark. 998, 511 S.W.2d 474 (1974).

The fact that the prevailing party's attorney served as a pallbearer at the funeral for the trial judge's father, eight days after the trial judge had made his decision but two days before it was communicated to the parties, did not show that the trial judge was biased in favor of the prevailing party. *Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453 (1983).

Chancellor not required to recuse where attorney for one party had previously represented the chancellor in an unrelated matter. *Noland v. Noland*, 326 Ark. 617, 932 S.W.2d 341 (1996).

Although the defendant argued that the trial judge should have recused from considering his ARCrP 37 petition because the trial judge, before he assumed the bench, prosecuted defendant on an unrelated matter ten years prior to the filing of the charges on which he is presently incarcerated, because the trial judge gained additional knowledge about defendant when he represented him on a civil mat-

ter, and because the judge played a role in defendant's return from the Act 309 program in Lawrence County, the trial court did not abuse its discretion in denying the motion to recuse. *Beshears v. State*, 329 Ark. 469, 947 S.W.2d 789 (1997).

The trial judge in a murder prosecution did not abuse his discretion in refusing to recuse himself, notwithstanding the defendant's assertions that (1) the person who discovered the victim's body was sister to the judge's case coordinator, (2) the judge had "expressed pity" for the victim upon hearing of the crime, and (3) the judge knew the father of the victim's daughter-in-law and had presided over an initial guardianship hearing in a case involving the victim. *Gates v. State*, 338 Ark. 530, 25 S.W.3d 40 (1999).

Prejudice.

Prejudice of the judge is no reason for disqualification. *State v. Flynn*, 31 Ark. 35 (1876); *Jones v. State*, 61 Ark. 88, 32 S.W. 81 (1895); *Reaves v. State*, 229 Ark. 453, 316 S.W.2d 824 (1958), cert. denied, 359 U.S. 944, 79 S. Ct. 723, 3 L. Ed. 2d 676 (1959).

Judge properly refused to disqualify himself where there were no facts showing bias or prejudice and no one expressed an opinion that such existed. *Norman v. State*, 236 Ark. 476, 366 S.W.2d 891, cert. denied, 375 U.S. 933, 84 S. Ct. 337, 11 L. Ed. 2d 265 (1963).

Where portions of the letter of defendant's first attorney to the judge, asking to be relieved of the appointment as defendant's attorney, might tend to prejudice the judge against him, the judge properly did not disqualify himself. *Norman v. State*, 236 Ark. 476, 366 S.W.2d 891, cert. denied, 375 U.S. 933, 84 S. Ct. 337, 11 L. Ed. 2d 265 (1963).

The mere fact that the judge might have an opinion as to the merits of the case does not constitute prejudicial bias. *VanHook v. VanHook*, 270 Ark. 27, 603 S.W.2d 434 (1980).

A judge's out-of-court statement that he would send the defendant to the penitentiary if he came before his court again was not an indication of lasting bias; therefore, the judge was not disqualified from presiding over the fifth felony prosecution of the defendant. *Jordon v. State*, 274 Ark. 572, 626 S.W.2d 947 (1982).

The fact that a judge may have or may

develop during the trial an opinion, a bias, or a prejudice does not make the trial judge so biased and prejudicial as to require his disqualification in further proceedings. *Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453 (1983).

The fact that the defendant had been given a mimeographed form of pretrial order which required the attorney who was to conduct the trial to appear at pretrial conference with the authority to enter binding stipulations, including authority to waive jury trial, did not show that the defendant was coerced into a trial by the court or that the trial judge was impliedly biased against the defendant. *Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453 (1983).

Denial of motion, at post-conviction hearing, to recuse trial judge based upon circumstances supposedly indicating bias, in that the trial judge had recently presided at the trial of another accused of the same murder as defendant, was proper. *Welch v. State*, 283 Ark. 281, 675 S.W.2d 641 (1984).

Special Justices.

When justices of State Supreme Court find it necessary to disqualify themselves

from participating in a case, it is imperative that there be some safety valve that will allow the parties to continue before the court; special justices serve this purpose and any opinion of the Supreme Court involving one or more special justices shall bear the same precedential value as any other. *Medlock v. Leathers*, 311 Ark. 175, 842 S.W.2d 428 (1992), cert. denied, 508 U.S. 960, 113 S. Ct. 2929, 124 L. Ed. 2d 680 (1993).

Waiver.

While disqualification of a judge may be waived, ignorance of the grounds for disqualification cannot constitute such a waiver, and if a party discovers the grounds after the trial has been completed, it is grounds for reversal on appeal. *Lofton v. State*, 57 Ark. App. 226, 944 S.W.2d 131 (1997).

Cited: *Dyas v. Lockhart*, 771 F.2d 1144 (8th Cir. 1985); *Spradlin v. Arkansas Ethics Comm'n*, 310 Ark. 458, 837 S.W.2d 463 (1992); *Trimble v. State*, 336 Ark. 437, 986 S.W.2d 392 (1999).

§ 23. Charge to juries.

Judges shall not charge juries with regard to matters of fact, but shall declare the law; and, in jury trials, shall reduce their charge or instructions to writing, on the request of either party.

RESEARCH REFERENCES

Ark. L. Rev. Civil Procedure — Limitation on Instructing the Jury as to Matters of Fact, 5 Ark. L. Rev. 88.

Criminal Procedure — A Survey of Arkansas Law and the American Bar Association; Standards, 26 Ark. L. Rev. 169.

Criminal Procedure — Specificity of Objection, 28 Ark. L. Rev. 406.

Statutory Presumptions: A Permissible Inference, 29 Ark. L. Rev. 247.

Notes, *Shockley v. State: The Constitutionality of the Arkansas Habitual Offender Determination Procedure*, 39 Ark. L. Rev. 553.

Foster, *Nobles v. Casebier and Judicial Comments on the Evidence in Arkansas*, 51 Ark. L. Rev. 801.

UALR L.J. Arkansas Law Survey, Greene, Civil Procedure, 7 UALR L.J. 167.

CASE NOTES

ANALYSIS

In general.
Purpose.
Applicability.

Appeal.
Credibility of witnesses.
Discretion of court.
Improper instructions or comments.
—Comments.

- Expert testimony.
- Voir dire.
- Instruction by court on own motion.
- Objections.
- Oral instructions.
- Presumptions.
- Proper instructions or comments.
- Comments.
- Exhibits.
- Reading of instructions.
- Verdicts.
- Verdicts not supported by evidence.
- Written instructions.

In General.

The court may not point out inferences to be drawn from particular facts in evidence. *Rector v. Robins*, 82 Ark. 424, 102 S.W. 209 (1907); *Duckworth v. State*, 83 Ark. 192, 103 S.W. 601 (1907); *Thomas v. State*, 85 Ark. 138, 107 S.W. 390 (1908); *Hogue v. State*, 93 Ark. 316, 124 S.W. 783 (1910); *McLemore v. State*, 111 Ark. 457, 164 S.W. 119 (1914); *Phares v. State*, 155 Ark. 75, 243 S.W. 1061 (1922).

Credibility of witnesses is for the jury. *Saint Louis S.W. Ry. v. Britton*, 107 Ark. 158, 154 S.W. 215 (1913).

Juries are the sole judges of the weight of the evidence and credibility of witnesses. *Texas & Pac. Ry. v. Stephens*, 192 Ark. 115, 90 S.W.2d 978 (1936).

Purpose of statute providing for competency hearing prior to criminal trial was not to deprive the jury of its right to determine sanity of the defendant, as this would be contrary to the Constitution, but to furnish the jury the assistance of trained mental experts in order that the jury might reach a proper verdict upon sanity of the defendant. *Forby v. Fulk*, 214 Ark. 175, 214 S.W.2d 920 (1948).

The fact that an instruction is applicable to the facts and in the language of a statute does not guarantee it is proper. *French v. State*, 256 Ark. 298, 506 S.W.2d 820 (1974).

General objection to instruction in the words of statute as to presumption based on possession of a certain amount of heroin as being unconstitutional did not raise the issue of an impermissible comment on the evidence by the judge. *Brooks v. State*, 256 Ark. 1059, 511 S.W.2d 654 (1974).

The action of the trial court in resolving the question as to defendant's fitness to stand trial was proper and statute making the issue a question of law does not in any

way violate this section. *Rogers v. State*, 264 Ark. 258, 570 S.W.2d 268 (1978).

Purpose.

The purpose of this section is to give counsel for either party an opportunity to study the instructions and to make objections and exceptions in the judge's chambers, and, when done in that manner, there is no danger of the jury being influenced by rulings that the court makes on request for or objections to instructions. *Hicks v. State*, 225 Ark. 916, 287 S.W.2d 12 (1956).

Applicability.

Provision of this section that judges shall not charge juries with regard to matters of fact applies not only to what judges tell jury in course of formal instructions but also as to what they say in colloquies with jurors in jury's hearing. *Arkansas State Hwy. Comm'n v. Suddreth*, 239 Ark. 359, 389 S.W.2d 423 (1965).

Issue of the number of prior convictions is a matter of law, not fact; thus, the prohibition against commenting on a factual issue does not apply. *McGirt v. State*, 289 Ark. 7, 708 S.W.2d 620 (1986).

Appeal.

An appellant cannot assign as error the failure to instruct on any issue unless he has submitted a proposed instruction on that issue; a mere request for an instruction is insufficient. *Mings v. State*, 318 Ark. 201, 884 S.W.2d 596 (1994).

An appellant who seeks reversal based on the failure to instruct the jury as requested by the appellant must present a record showing a proffer of the requested instruction. *Watson v. State*, 329 Ark. 511, 951 S.W.2d 304 (1997).

Credibility of Witnesses.

The requirement of this section applies as well to the credibility of witnesses and the weight to be given their testimony as to the outright truth or falsity of what they say. *Fuller v. State*, 217 Ark. 679, 232 S.W.2d 988 (1950); *Arkansas State Hwy. Comm'n v. Suddreth*, 239 Ark. 359, 389 S.W.2d 423 (1965); *Seale v. State*, 240 Ark. 466, 400 S.W.2d 269 (1966).

Determining credibility of witnesses is within a jury's domain. *Scroggins v. State*, 312 Ark. 106, 848 S.W.2d 400 (1993).

Discretion of Court.

There was no ground for reversal in the

refusal to give a cautionary instruction in the absence of gross abuse of discretion where the trial judge did instruct the jury that it was the sole judge of the credibility of the witnesses and the weight to be given to the testimony of any and all witnesses and that these were matters with which the court had nothing to do. *Cobb v. State*, 265 Ark. 527, 579 S.W.2d 612 (1979).

Improper Instructions or Comments.

The court is not allowed to instruct as to a different weight for affirmative and negative testimony. *Keith v. State*, 49 Ark. 439, 5 S.W. 880 (1887).

The court may not instruct the jury to resolve the bias of a witness against the party in whose favor he leans. *Bing v. State*, 52 Ark. 263, 12 S.W. 559 (1889).

Where the court answered a question asked by the jury during deliberation after the court had conferred with counsel for the State and the defendant and with the consent of the defendant's counsel, the instruction was not proper, but because the consent was given by the defendant, it was not reversible error. *Clack v. State*, 213 Ark. 652, 212 S.W.2d 20 (1948).

Where the defendant was on trial for murder of deceased, the court properly refused an instruction of the defendant which requested the court to instruct the jury that if deceased was of a rash, turbulent, and violent disposition, and the defendant has knowledge of such disposition, the jury might consider this as a reasonable cause for defendant's apprehension of great personal injury to her. *Cellars v. State*, 214 Ark. 326, 216 S.W.2d 47 (1948).

It was error for court in action against defendant for crime of fondling a child to give instruction to jury to the effect that no corroboration of testimony offered by prosecuting witness was necessary and that her testimony alone, if believed by jury beyond a reasonable doubt, was sufficient to sustain a conviction. *Skaggs v. State*, 234 Ark. 510, 353 S.W.2d 3 (1962).

It is error for the trial court to instruct the jury as to the written report of the physician employed by the state hospital because it singles out and calls the jury's attention to particular evidence. *Walker v. State*, 239 Ark. 172, 388 S.W.2d 13 (1965).

Instructions upon the weight of evidence, or which assume facts which are

for the consideration of the jury, are erroneous. *Flynn v. State*, 43 Ark. 289 (1884); *Polk v. State*, 45 Ark. 165 (1885); *Stephens v. Oppenheimer & Sons*, 45 Ark. 492 (1885); *Cameron v. Vandergriff*, 53 Ark. 381, 13 S.W. 1092 (1890); *Blankenship v. State*, 55 Ark. 244, 18 S.W. 54 (1891); *Missouri P. Ry. v. Byars*, 58 Ark. 108, 23 S.W. 583 (1893); *McMurray v. Boyd*, 58 Ark. 504, 25 S.W. 505 (1894); *Townslly-Myrick Dry Goods Co. v. Greenfield*, 58 Ark. 625, 25 S.W. 282 (1894); *Mitchell v. State*, 125 Ark. 260, 188 S.W. 805 (1916); *Burgess v. State*, 206 Ark. 157, 174 S.W.2d 239 (1943); *Skaggs v. State*, 234 Ark. 510, 353 S.W.2d 3 (1962); *Steel Erectors, Inc. v. Lee*, 253 Ark. 151, 484 S.W.2d 874 (1972); *Walker v. State*, 253 Ark. 676, 488 S.W.2d 40 (1972); *Orkin Exterminating Co. v. Wheeling Pipeline, Inc.*, 263 Ark. 711, 567 S.W.2d 117 (1978).

—Comments.

It is error for the judge, in the presence of the jury, to advise the state's attorney to dismiss a prosecution for the want of evidence. *State v. Wardlaw*, 43 Ark. 73 (1884); *O'Neal v. Richardson*, 78 Ark. 132, 92 S.W. 1117 (1906).

In eminent domain proceeding where, in response to motion to strike certain testimony of expert because expert allegedly took into consideration elements not recoverable, trial judge stated that he understood from testimony that witness did not consider those matters, comments of trial judge amounted to construction of testimony and comment on the evidence within the meaning of the prohibition of this section. *Arkansas State Hwy. Comm'n v. Suddreth*, 239 Ark. 359, 389 S.W.2d 423 (1965).

The reading of that portion of statute relating to failure to pay liens being prima facie evidence of intent to defraud is prohibited by this section, which prohibits the court from commenting on the evidence to the jury. *Reno v. State*, 241 Ark. 127, 406 S.W.2d 372 (1966).

Where statement of the court in the presence of the jury was not merely a comment on the evidence, but constituted a disposition by the court of a material fact question tending to irrevocably fix in the minds of the jury that the defendants were at fault, leaving the question of equal or greater fault upon the part of others at interest in the litigation open,

the damage to defendants was not cured by any subsequent action of the court. *Chicago, R.I. & P.R.R. v. Adair*, 241 Ark. 412, 407 S.W.2d 930 (1966).

Remarks of the court concerning the character of a witness is an invasion of the province of the jury and violative of this section. *Williams v. State*, 175 Ark. 752, 2 S.W.2d 36 (1927); *Cameron v. State*, 214 Ark. 512, 216 S.W.2d 881 (1949); *West v. State*, 255 Ark. 668, 501 S.W.2d 771 (1973).

Where a law provides that a bank would not be liable if a joint tenant withdrew money without a passbook and another law permits the existence of a contract requiring the use of a passbook, a judge's comment that one is a later statement of the law is an improper comment on the evidence. *Haseman v. Union Bank*, 262 Ark. 803, 562 S.W.2d 45 (1978).

It is reversible error for a judge to express an opinion concerning a fact in the presence of the jury. *Roe Rice & Land Co. v. Strobhart*, 123 Ark. 146, 184 S.W. 461 (1916); *Hinson v. State*, 133 Ark. 149, 201 S.W. 811 (1918); *Cameron v. State*, 214 Ark. 512, 216 S.W.2d 881 (1949); *Breeden v. State*, 270 Ark. 90, 603 S.W.2d 459 (1980); *Tandy Corp. v. Bone*, 283 Ark. 399, 678 S.W.2d 312 (1984).

It was improper and prejudicial for trial court to permit policemen who had testified against defendant to sit within the rail in a place usually reserved for the parties during the closing arguments, as this amounted to a comment on the evidence. *Moore v. State*, 299 Ark. 532, 773 S.W.2d 834 (1989).

—Expert Testimony.

The second paragraph of AMI Civil 3d 1501 (a medical malpractice instruction) does not violate this section by making an improper comment on the evidence because it does not provide for the testimony of any particular expert witness to be given greater weight; rather, it simply instructs the jury that, when a physician's skill or learning has been challenged, the applicable standard of care is to be determined exclusively through the assistance of expert testimony. *Taylor v. Riddell*, 320 Ark. 394, 896 S.W.2d 891 (1995).

—Voir Dire.

Where trial court judge in capital murder case questioned prospective jurors

concerning possible bias, whether they could convict on circumstantial evidence and fairly impose the death penalty, he committed error in commenting on the evidence in violation of this section. *Hobbs v. State*, 273 Ark. 125, 617 S.W.2d 347 (1981).

Instruction by Court on Own Motion.

The Constitution contemplates that the court will have some freedom in the matter of giving instructions on its motion after the jury has retired. *Leggett v. State*, 227 Ark. 393, 299 S.W.2d 59 (1957), cert. denied, 357 U.S. 942, 78 S. Ct. 1393, 2 L. Ed. 2d 1556 (1958).

Objections.

To properly preserve an objection to trial court's failure to give an instruction, the defendant must proffer the requested instruction; this procedure expedites trial and facilitates compliance with this section and A.R.Cr.P. 33.3. *Pharo v. State*, 30 Ark. App. 94, 783 S.W.2d 64 (1990).

Oral Instructions.

The giving of oral instructions was not prejudicial if they were covered by instructions in writing. *Hlass v. Fulford*, 77 Ark. 603, 92 S.W. 862 (1906).

An oral direction to the jury was not error if there was no request for written instructions. *Richardson v. State*, 80 Ark. 201, 96 S.W. 752 (1906).

A long cautionary statement, though not within the inhibition of this section, should be reduced to writing to prevent future dispute. *Stockton v. State*, 174 Ark. 472, 295 S.W. 397 (1927).

An oral statement to the jury which was not an instruction upon law or fact and contained no direction to the jury was not violative of this section. *Lambert Co. v. Newton*, 174 Ark. 209, 294 S.W. 707 (1929).

Court's procedure in giving oral charge to jury on its request for further instructions was not prejudicial error where the defense objected to the charges having been oral after the jury had again left the courtroom and there was no request that the supplemental instruction be reduced to writing, which, if accomplished before the end of the trial, would have complied literally with the constitutional requirement. *Leggett v. State*, 227 Ark. 393, 299 S.W.2d 59 (1957), cert. denied, 357 U.S.

942, 78 S. Ct. 1393, 2 L. Ed. 2d 1556 (1958).

ARCP 33.3 and this section make it mandatory that the trial judge, when requested by a party or a juror, deliver to the jury a typewritten copy of the oral instructions given to the jury. *Henry v. State*, 18 Ark. App. 115, 710 S.W.2d 849 (1986).

Presumptions.

Court's comment that everybody is presumed to be telling the truth made after defense attorney on cross-examination asked witness "You had that pretty well memorized, didn't you?" constituted prejudicial error under this section. *Dunfee v. State*, 242 Ark. 210, 412 S.W.2d 614 (1967).

Statute creating a rebuttable presumption of possession of heroin is not in violation of this section because there is no requirement that the jury be instructed as to the effect of proving possession of more than 100 milligrams of heroin. *Stone v. State*, 254 Ark. 1011, 498 S.W.2d 634 (1973).

Instruction which quoted language of statute to the effect that possession of more than a specified amount of a drug created a rebuttable presumption that the possessor had the intent to deliver the drug in violation of the statute violated the constitutional provision that the trial court shall not comment on the evidence. *Robinson v. State*, 256 Ark. 852, 510 S.W.2d 867 (1974).

The trial court, in a prosecution for manslaughter, erred in giving an instruction concerning the defendant's blood alcohol level, where such instruction improperly told the jury that a specific fact in evidence, i.e., the fact that the defendant's blood alcohol test registered 0.15%, was sufficient to support an inference or presumption of fact that the defendant was under the influence of intoxicating liquor. *Ethridge v. State*, 9 Ark. App. 111, 654 S.W.2d 595 (1983).

Proper Instructions or Comments.

Statement by the court in its charge to the jury that "it is undisputed that the prosecutrix, Carolyn Phelps, was under the age of 16 years at the time of the alleged crime," was not a comment on the weight of the evidence, as statement meant that no witness had testified in direct contradiction to evidence that

Carolyn was under 16. *Warford v. State*, 214 Ark. 423, 216 S.W.2d 781 (1949).

In a prosecution for burglary and grand larceny, an instruction that possession of recently stolen property without reasonable explanation was evidence tending to show guilt to be considered and weighed by the jury, but that such evidence alone did not require conviction even though un rebutted, did not violate this section. *Petty v. State*, 245 Ark. 808, 434 S.W.2d 602 (1968).

Where insanity was offered as a defense, it was not improper of a judge to instruct the jury that a previous adjudication of insanity could be considered by them but was not conclusive. *Hill v. State*, 252 Ark. 345, 479 S.W.2d 234 (1972).

Where the challenged instruction merely set out the law applicable to the issue of false arrest, and where the instruction did not advise the jury that any presumption had been established by the evidence adduced at trial, but to the contrary, advised the jury that if they found the facts to meet the requisites for the statutory presumption then their verdict should be for defendant, the instruction given was not erroneous. *Dawson v. Pay Less Shoes #904 Co.*, 269 Ark. 23, 598 S.W.2d 83 (1980).

In a prosecution for theft by receiving, the trial court's instruction did not result in a comment upon the weight of evidence where the instruction did not say that there was evidence the defendants were in unexplained possession of recently stolen property but only that evidence of such possession could be considered by the jury. *Newton v. State*, 271 Ark. 427, 609 S.W.2d 328 (1980), appeal dismissed, 454 U.S. 805, 102 S. Ct. 77, 70 L. Ed. 2d 74 (1981).

A jury instruction concerning the defense of intoxication in which the court stated that ordinarily, self-induced intoxication, whether by alcohol or drugs or other substances, is not a defense to prosecution and that the fact that a person was intoxicated at the time he allegedly committed an offense does not necessarily show that he was deprived of his mental abilities for a person may be intoxicated and at the same time be able to form a purposeful intent, did not amount to a comment on the evidence in violation of this section; the instruction was proper since the defendant was alleging the affirmative defense of intoxication. *Pruett v.*

State, 282 Ark. 304, 669 S.W.2d 186, cert. denied, 469 U.S. 963, 105 S. Ct. 362, 83 L. Ed. 2d 298 (1984).

—Comments.

In prosecution for rape and burglary, where prosecutrix had previously identified the defendant as her assailant, the defense had challenged her identification of the defendant, and the prosecution sought to have her again identify the defendant as her assailant, a remark by the trial court merely restating the witness' testimony on this matter did not constitute a comment on the evidence in violation of this section. *Conley v. State*, 267 Ark. 713, 590 S.W.2d 66 (Ct. App. 1979).

Where defendant did not respond to request for disclosure of any defense to be used at trial, and trial judge, unaware of defendant's defense, questioned the relevancy of the defense counsel's line of questioning in front of the jury, which counsel was permitted to pursue after in chambers discussions, the questioning by the judge did not amount to an impermissible comment on defendant's evidence under this section. *Warren v. State*, 272 Ark. 231, 613 S.W.2d 97 (1981).

Although the trial judge, in sustaining an objection to a line of questioning, stated that the questioning of the preceding witness had "got out of hand," the defendant was not entitled to a mistrial on the ground that the court had commented on the evidence where the trial judge admonished the jury that he had not intended by anything he had done or said to intimate or suggest what they should find to be the facts. *Barnes v. State*, 4 Ark. App. 84, 628 S.W.2d 334 (1982).

Where, in a prosecution for rape and burglary, the trial court gave a cautionary instruction to the jury, prior to the testimony of the victim of a separate rape, to the effect that the sole purpose of the testimony was to determine whether the two rapes were committed by the same person, the instruction was proper and did not amount to a comment on the facts in violation of this section. *Kellensworth v. State*, 275 Ark. 252, 631 S.W.2d 1 (1982).

The trial court's comment stating that "that's the state of the record at this time" and telling the jury that the issue of a blood test being given or not given was "not an issue in this case" was merely an

attempt to sum up the proof at that point in the trial and clearly left open the possibility of testimony being developed later in the trial. *Weatherford v. State*, 286 Ark. 376, 692 S.W.2d 605 (1985).

The trial judge's comment equating "road dope," the meaning of which was at issue during the trial, with "amphetamine," a controlled substance, and his incorrect statement that defendant had "sold" a substance to a police officer, amounted merely to harmless error. *Honea v. State*, 15 Ark. App. 382, 695 S.W.2d 391 (1985).

Questions asked by trial judge did not amount to a comment on the evidence in violation of the section. *Whitlock v. Smith*, 297 Ark. 399, 762 S.W.2d 782 (1989).

—Exhibits.

The court did not impermissibly comment on the evidence when it sent all of the evidence to the jury for review following a request by the jury to see a single piece of evidence. *Goff v. State*, 341 Ark. 567, 19 S.W.3d 579 (2000).

Reading of Instructions.

Directing counsel to read to the jury instructions given at their request, though not proper, was held not prejudicial where court stated that instructions given were the instruction of the court and that jury was bound to consider them as the law of the case. *Missouri P.R.R. v. Hunnicut*, 193 Ark. 1128, 104 S.W.2d 1070 (1937).

Verdicts.

If there is any evidence, however slight, pertinent to the issue, the court should not take it from the jury and direct their verdict. *Little Rock & Ft. S.R.R. v. Barker*, 33 Ark. 350 (1878); *Harris v. State*, 34 Ark. 469 (1879); *Edmonds v. State*, 34 Ark. 720 (1879); *Overton v. Mathews*, 35 Ark. 146 (1879); *St. Louis, I. Mt. & S.R.R. v. Vincent*, 36 Ark. 451 (1880); *Little Rock & Ft. S.R.R. v. Perry*, 37 Ark. 164 (1881); *Fitzpatrick v. State*, 37 Ark. 238 (1881); *Shinn v. Tucker*, 37 Ark. 580 (1881).

It is error to direct a verdict in a misdemeanor case punishable by imprisonment. *Roberts v. State*, 84 Ark. 564, 106 S.W. 952 (1907); *Parker v. State*, 130 Ark. 234, 197 S.W. 283 (1917).

The verdicts of juries shall not be set aside by the court if there is substantial evidence to sustain them. *Washington*

County v. Day, 196 Ark. 147, 116 S.W.2d 1051 (1938).

Appellate court, when confronted with substantial evidence found to be true by verdict of the jury, the effect of which does not violate or contradict any well known natural law or principle, is not at liberty to disregard such verdict. *Missouri Pac. Transp. Co. v. George*, 198 Ark. 1110, 133 S.W.2d 37 (1939).

Where the amount to be recovered by the plaintiff was a disputed question of fact, it was the exclusive province of the jury to determine it; the court has no power to amend the verdict by increasing or decreasing the amount found by the jury as the court cannot substitute its judgment for that of the jury upon a disputed question of fact. *Womack v. Brickell*, 232 Ark. 385, 337 S.W.2d 655 (1960).

—Verdicts Not Supported by Evidence.

In jury trials, when the evidence is not legally sufficient to sustain a verdict for plaintiff, it is the duty of the court to so declare the law. If the whole case appears to have been developed, a verdict for the defendant should be directed; if it is probable that the missing link in the evidence can be supplied, the plaintiff should be permitted to take a nonsuit. *Catlett v. St. Louis, I.M. & S. Ry.*, 57 Ark. 461, 21 S.W. 1062 (1893).

If the trial court finds that the verdict of the jury is against the preponderance of the evidence, it is reversible error to fail to set the verdict aside. *Twist v. Mullinix*, 126 Ark. 427, 190 S.W. 851 (1916).

Written Instructions.

When instructions are requested to be in writing, it is mandatory that they be

reduced to writing. *National Lumber Co. v. Snell*, 47 Ark. 407, 1 S.W. 708 (1886); *Mazzia v. State*, 51 Ark. 177, 10 S.W. 257 (1888); *Arnold v. State*, 71 Ark. 367, 74 S.W. 513 (1902).

It is only at a request of a party that the judge is required to reduce his instructions to writing. *O'Neal v. Richardson*, 78 Ark. 132, 92 S.W. 1117 (1906).

The cause will be reversed when the court fails to reduce instructions to writing when so requested except in cases where it affirmatively appears that no prejudice resulted from the failure. *Merrill v. Van Buren*, 125 Ark. 248, 188 S.W. 537 (1916).

All requirements are met if the instructions are reduced to writing and subject to inspection by counsel at some time before the end of the trial. *Reed v. Rogers*, 134 Ark. 528, 204 S.W. 973 (1918).

Cited: *Rome v. Ahlert*, 231 Ark. 844, 332 S.W.2d 809 (1960); *Curtis Circulation Co. v. Henderson*, 232 Ark. 1029, 342 S.W.2d 89 (1961); *Walker v. State*, 241 Ark. 300, 663, 408 S.W.2d 905 (1966); *French v. State*, 256 Ark. 298, 506 S.W.2d 820 (1974); *Golden v. State*, 265 Ark. 99, 576 S.W.2d 955 (1979); *Newton v. State*, 271 Ark. 427, 609 S.W.2d 328 (1980); *Price v. State*, 276 Ark. 80, 632 S.W.2d 429 (1982); *Ford v. State*, 276 Ark. 98, 633 S.W.2d 3 (1982); *Gilbert v. State*, 277 Ark. 61, 639 S.W.2d 346 (1982); *Bradley v. State*, 8 Ark. App. 300, 651 S.W.2d 113 (1983); *Blaney v. State*, 280 Ark. 253, 657 S.W.2d 531 (1983); *James v. State*, 280 Ark. 359, 658 S.W.2d 382 (1983); *Holt v. State*, 15 Ark. App. 269, 692 S.W.2d 265 (1985); *Willett v. State*, 18 Ark. App. 125, 712 S.W.2d 925 (1986); *Remeta v. State*, 300 Ark. 92, 777 S.W.2d 833 (1989); *Foster v. Lockhart*, 811 F. Supp. 1363 (E.D. Ark. 1992), *aff'd*, 9 F.3d 722 (8th Cir. 1993).

§ 24. [Repealed.]

Publisher's Notes. This section, concerning prosecuting attorneys and judges debarred from practice, was repealed by

Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 25. [Repealed.]

Publisher's Notes. This section, concerning prosecuting attorneys and judges debarred from practice, was repealed by

Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 26. Punishment of indirect contempt provided for by law.

The General Assembly shall have power to regulate, by law, the punishment of contempts; not committed in the presence or hearing of the courts, or in disobedience of process.

RESEARCH REFERENCES

Ark. L. Notes. Becker, The Remedial Side of Contempt When Injunctions are Disregarded, 1983 Ark. L. Notes 5.

Ark. L. Rev. Legal Liability for the Exercise of Free Speech, 10 Ark. L. Rev. 155.

CASE NOTES

ANALYSIS

Delegation.
Direct contempt.
Inherent power of court.

Delegation.

Order of chancery court appointing committee to investigate a law firm on charges of contempt and alleged violation of Code of Professional Ethics exceeded jurisdiction of court. *Davis v. Merritt*, 252 Ark. 659, 480 S.W.2d 924 (1972).

Section 16-10-108, which sets forth the powers of the court in punishing criminal contempt, is not a limitation on the power of the court to inflict punishment for disobedience of process, for, under this section of the constitution, the legislature cannot abridge the power of the courts to punish for contempt in disobedience of their process; the constitution specially reserved this inherent power in the courts when delegating authority to the legislature to regulate punishments for contempts. *Yarbrough v. Yarbrough*, 295 Ark. 211, 748 S.W.2d 123 (1988).

Direct Contempt.

The legislature cannot fix the punishment for contempts committed in the presence or hearing of the court or in disobedience of the court's process. *Ford v. State*, 69 Ark. 550, 64 S.W. 879 (1901); *Bryan v. State*, 99 Ark. 163, 137 S.W. 561 (1911); *Spight v. State*, 155 Ark. 26, 243 S.W. 860 (1922).

Offering physical violence to the person of the judge while the court was not in session was direct contempt, constructively in the presence of the court, in that it would intimidate or control the action of the judge in a subsequent trial of the case. *Weldon v. State*, 150 Ark. 407, 234 S.W. 466 (1921).

Inherent Power of Court.

The power to punish for contempt is inherent in courts and they may go beyond the powers given by statute. *Carl Lee v. State*, 102 Ark. 122, 143 S.W. 909 (1912); *Turk v. State*, 123 Ark. 341, 185 S.W. 472 (1916).

While the constitution delegates authority to the legislature to regulate punishment for contempt, this delegation is in addition to and not in derogation of the inherent power of the court to punish for contempt, which includes disobedience of process. *Smith v. Smith*, 28 Ark. App. 56, 770 S.W.2d 205 (1989).

Section 16-10-108 is not a limitation on the power of the courts to impose punishment for disobedience of process because, under this section, the legislature cannot abridge the power of the courts to punish for contempt in disobedience of their process. *Arkansas Dep't of Human Servs. v. Clark*, 305 Ark. 561, 810 S.W.2d 331 (1991).

The standard regarding the inherent power of the court to sentence someone for contempt under § 16-10-108 is included in this section. *Carle v. Burnett*, 311 Ark. 477, 845 S.W.2d 7 (1993).

The power to punish for contempt is inherent in courts; they may go beyond the powers given by statute. *Carle v. Burnett*, 311 Ark. 477, 845 S.W.2d 7 (1993).

Attorney's actions in disobeying the court's order fell within the inherent powers of the court to punish for contempt under this section; the court was not bound by the limitations set out in the contempt statute (§ 16-10-108). *Carle v. Burnett*, 311 Ark. 477, 845 S.W.2d 7 (1993).

Jail sentence for an attorney was voided as the judge plainly, manifestly, and grossly abused his discretion in using criminal contempt as a penalty for the failure of the attorney to pay the sanctions

imposed by the judge in the civil proceeding. *Ivy v. Keith*, 351 Ark. 269, 92 S.W.3d 671 (2002).

Cited: *Vandergriff v. State*, 239 Ark. 1119, 396 S.W.2d 818 (1965).

§ 27. Removal of county and township officers — Grounds.

The Circuit Court shall have jurisdiction upon information, presentment, or indictment, to remove any county or township officer from office for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance or nonfeasance in office.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct Under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

Wills, Constitutional Crisis: Can the Governor (or Other State Officeholder) Be Removed from Office in a Court Action after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

CASE NOTES

ANALYSIS

Applicability.

Grounds for removal.

Indictment, information or presentment.

Legislative interference prohibited.

Notice.

Re-election.

Suspension prior to trial.

Applicability.

This section relates to the elective county and township officers created by the Constitution itself. *Patton v. Vaughan*, 39 Ark. 211 (1882).

Clearly from the language of this section a circuit court has jurisdiction, upon presentment of a indictment, to remove the county sheriff from office. *Hester v. Langston*, 297 Ark. 87, 759 S.W.2d 797 (1988).

Grounds for Removal.

A public officer is not subject to removal from office because of acts done prior to his present term of office. *Rice v. State*, 204 Ark. 236, 161 S.W.2d 401 (1942).

Indictment, Information or Presentment.

The terms "information," "presentment" and "indictment" are used in their own

technical common-law sense and, where not regulated by statute, the practice will be as at common law. *State v. Whitlock*, 41 Ark. 403 (1883).

When the alleged cause of removal is a matter not cognizable by a grand jury, the prosecuting attorney may proceed upon his own motion by information filed under oath; but, if it is an indictable offense, the proceeding must be by indictment. *Haskins v. State*, 47 Ark. 243, 1 S.W. 242 (1886).

In case the removal is to be accomplished by an indictment, the offense set forth must be one which necessarily includes the grounds for removal, otherwise, removal would be accomplished without trial upon the issue as to the existence of grounds for removal. *McClain v. Sorrels*, 152 Ark. 321, 238 S.W. 72 (1922).

Legislative Interference Prohibited.

The Constitution provides a complete scheme for declaring forfeitures of office and removing officers, and there is an implied prohibition against legislative interference. *Speer v. Wood*, 128 Ark. 183, 193 S.W. 785 (1917).

Notice.

There is no authority for a circuit court to remove a county officer without any

notice; notice is the foundation of due process of law and, where there was none, an order for the removal of judge would be invalid. *Anderson v. State*, 266 Ark. 192, 583 S.W.2d 14 (1979).

Re-Election.

There is no prohibition from re-election after removal from office. *Jacobs v. Parham*, 175 Ark. 86, 298 S.W. 483 (1927).

Suspension Prior to Trial.

Under this section, no final order of removal would be made until after trial

and conviction; however, a statute permitting suspension from office prior to the trial was not violative of this section. *Allen v. State*, 32 Ark. 241 (1877).

A constable may be suspended for any criminal conduct amounting to a felony, whether it be official misconduct or not. *Jones v. State*, 104 Ark. 261, 149 S.W. 56 (1912).

A preliminary order of suspension unauthorized by statute is void. *Winfrey v. State*, 133 Ark. 357, 202 S.W. 23 (1918).

§ 28. County courts — Jurisdiction — Single judge holding court.

The County Courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The County Court shall be held by one judge, except in cases otherwise herein provided.

Publisher's Notes. As to jurisdiction of matters relating to juveniles and bastardy, see Amendment 67.

Cross References. County Government Code, § 14-14-101 et seq.

Reorganization of county government, Const., Amend. 55.

RESEARCH REFERENCES

Ark. L. Rev. The Arkansas Judiciary at the Crossroads, 17 Ark. L. Rev. 259.

Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

Fuqua, Comments: Bastardy Law in Arkansas — The Need for Revision, 33 Ark. L. Rev. 178.

UALR L.J. Survey of Arkansas Law, Family Law, 1 UALR L.J. 200.

Shively, Survey of Family Law, 3 UALR L.J. 223.

Casey, Arkansas Juvenile Courts: Do Law Judges Satisfy Due Process in Delinquency Cases?, 6 UALR L.J. 501.

Arkansas Law Survey, Price, Civil Procedure, 9 UALR L.J. 91.

CASE NOTES

Note. Many of the following cases were decided prior to the adoption of Ark. Const. Amend. 55 and the reorganization of county government by Acts 1977, No. 742. See § 14-14-101 et seq.

ANALYSIS

Amendment.
Audit of books and records.
Bastardy.

—Chancery court.
—Criminal prosecution.
—Guardians.
Boards of supervisors.
Circuit court.
Circuit judge.
Claims against county.
County judge.
County museum.
County seat.

Courthouse.
 Disbursement of funds.
 Effect of initiative and referendum.
 Elections.
 —Local option.
 Eminent domain.
 Ferries.
 Fiscal agent.
 Jurisdiction.
 Legislative authority.
 Levees.
 Liquor license.
 Local concerns.
 Minors.
 Multi-county industrial development.
 Municipal corporations.
 Prisons.
 Property.
 Quorum court.
 Roads and bridges.
 School districts.
 Sebastian County.
 Taxes.
 Vagrancy.

Amendment.

This section was not repealed by Amendment No. 2 to the Constitution, which created a commission to correct abuses and prevent unjust discrimination and excessive charges by railroad, canal, and turnpike companies for transporting freight and passengers. *Gray v. Duffy*, 152 Ark. 291, 238 S.W. 60 (1922).

Audit of Books and Records.

The county court may make a contract to have the books of the county officers audited without a specific appropriation therefor. *State v. E.F. Leathem & Co.*, 170 Ark. 1004, 282 S.W. 367 (1926).

The action of the levying court requesting the county judge to make an order directing an audit of the books and records of the county has no binding force on the county. *Rebsamen, Brown & Co. v. Van Buren County*, 177 Ark. 268, 6 S.W.2d 288 (1928).

Bastardy.

A bastardy statute permitting the court or judge to hear evidence and decide the case was not violative of this section as the words court and judge were synonymous. *Dobson v. State*, 69 Ark. 376, 63 S.W. 796 (1901).

The county court has exclusive original jurisdiction in all matters relating to bastardy in the county without regard to the

district of the county in which the parties reside or the child was born. *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *Higgs v. Higgs*, 227 Ark. 572, 299 S.W.2d 837 (1957); *Lee v. Grubbs*, 269 Ark. 205, 599 S.W.2d 715 (1980); *Jarmon v. Brown*, 286 Ark. 455, 692 S.W.2d 618 (1985).

Where admitted father of child born out of wedlock had made support payments for child, and filed a petition seeking a legal declaration that he is the father of the child and granting reasonable visitation privileges, the father must be granted a hearing in the county court. *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981).

Original jurisdiction of all matters relating to bastardy is in the county court pursuant to this section and, although the reason for placing that jurisdiction with the county court no longer exists, until and unless the Constitution is changed, that is the law. *Puckett v. Puckett*, 289 Ark. 67, 709 S.W.2d 82 (1986).

Determination of heirship is not a bastardy proceeding within the meaning of this section. *Henry v. Johnson*, 292 Ark. 446, 730 S.W.2d 495 (1987).

—Chancery Court.

The chancery court does not have jurisdiction over a putative father's petition to obtain visitation rights and to have the court fix the amount of support for an illegitimate child even though paternity was acknowledged by the putative father. *Rapp v. Kizer*, 260 Ark. 656, 543 S.W.2d 458 (1976).

A chancery court lacked jurisdiction when, as part of a divorce proceeding, it determined the paternity of a child born before the marriage since the county court has exclusive jurisdiction over bastardy proceedings. *Stain v. Stain*, 286 Ark. 140, 689 S.W.2d 566 (1985).

—Criminal Prosecution.

Although this article vests jurisdiction in the county court over all matters relating to bastardy, such jurisdiction is civil in nature and does not bar criminal prosecution in the circuit court. *Platt v. Ponder*, 233 Ark. 682, 346 S.W.2d 687 (1961).

—Guardians.

The county court does not have authority to appoint guardians; the probate court had jurisdiction to appoint a guardian of an illegitimate child and place her in the

custody of that guardian. *Lee v. Grubbs*, 269 Ark. 205, 599 S.W.2d 715 (1980).

Boards of Supervisors.

The county courts are continuations of the former boards of supervisors. *Dodson v. Mayor of Ft. Smith*, 33 Ark. 508 (1878).

Circuit Court.

Where plaintiff contends there is a procedural flaw in county's application of assessments, a circuit court would only have jurisdiction if involving an appeal from county court. *Scott County v. Frost*, 305 Ark. 358, 807 S.W.2d 469 (1991).

Circuit Judge.

The payment of circuit judge's salary is not a county purpose. *Cotham v. Coffman*, 111 Ark. 108, 163 S.W. 1183 (1914).

Claims Against County.

County courts have original exclusive jurisdiction to audit, settle, and direct the payment of all demands against the county. *Shaver v. Lawrence County*, 44 Ark. 225 (1884); *Chicot County v. Kruse*, 47 Ark. 80, 14 S.W. 469 (1885); *Saline County v. Kinkead*, 84 Ark. 329, 105 S.W. 581 (1907); *Woodruff County v. White*, 178 Ark. 606, 11 S.W.2d 478 (1928).

On appeal from an allowance of a claim against the county by the county court, the complaint cannot be amended by substituting another party as claimant as that would in effect be an exercise of original jurisdiction by the circuit court. *McLain v. Miller County*, 180 Ark. 828, 23 S.W.2d 264 (1930).

Corporation furnishing county concrete culvert forms under contract entered into by county judge, never approved by county court, were not entitled to recover on quantum meruit where county never accepted the forms or made claim to them, though county judge accepted delivery and stored the shipment on county property. *Lyons Mach. Co. v. Pike County*, 192 Ark. 531, 93 S.W.2d 130 (1936).

County court approval of salary claim and allowance for payment was a judicial action which amounted to a ratification of a previous contract made by county judge, and was not binding because made by the judge and not the court. *Watson v. Union County*, 193 Ark. 559, 101 S.W.2d 791 (1937).

A county court has exclusive original jurisdiction to audit, settle, and direct

payment of all demands against the county. *Campbell v. Little Rock School Dist.*, 222 Ark. 615, 262 S.W.2d 267 (1953) (decision prior to Const. Amend. 55, § 3).

County Judge.

There is no authority for providing for two county judges for a county, and an act by which it is attempted to do so is void. *Nixon v. Allen*, 150 Ark. 244, 234 S.W. 45 (1921).

County judges have no authority to make contracts on behalf of the county, such authority being conferred upon the county courts. *Lyons Mach. Co. v. Pike County*, 192 Ark. 531, 93 S.W.2d 130 (1936).

There is no provision in law allowing a quorum court to turn over to the county judge a sum of money to use as he sees fit and deems necessary, and such an appropriation is invalid. *Martin v. Bratton*, 223 Ark. 159, 264 S.W.2d 635 (1954).

Where plaintiff brought action for damages against county judge for dismissing her from position of director of county program on aging, the county judge, in hiring and firing county employees, was exercising administrative and ministerial functions and was not entitled to judicial immunity for his actions. *Clark v. Campbell*, 514 F. Supp. 1300 (W.D. Ark. 1981).

County Museum.

A county museum located near the site of the first state capital to house relics of the territorial period and of the Civil War is a matter of local concern within the meaning of this section. *Kendall v. Henderson*, 238 Ark. 832, 384 S.W.2d 954 (1964).

County Seat.

The county court has exclusive original jurisdiction of the matter of removing a county seat and to determine whether a majority of the electors of a county have voted for such removal. *Russell v. Jacoway*, 33 Ark. 191 (1878).

County courts have exclusive original jurisdiction to judge of a contested election over the county seat, and may purge the polls of fraudulent and illegal votes cast, subject to appeal to circuit court. *Willeford v. State ex rel. Circuit Clerk*, 43 Ark. 62 (1884).

The county judge may provide for the removal of the county seat from one lot to

another in the same town. *Graham v. Nix*, 102 Ark. 277, 144 S.W. 214 (1912).

Courthouse.

The circuit court cannot order the county court to erect a courthouse but may obtain suitable quarters for temporarily holding court and certify the expense to the county court. *Ex parte Turner*, 40 Ark. 548 (1883).

The county court may lease certain rooms in the courthouse and a parcel of land on the courthouse ground to a city for city uses, and such contract is not ultra vires. *Fayetteville v. Baker*, 176 Ark. 1030, 5 S.W.2d 302 (1928).

Disbursement of Funds.

Under the provisions of Ark. Const., Amend. 55, § 3, the jurisdiction of the disbursement of county funds is not now vested in the county court and the county judge does not act judicially in passing upon the claims against the county. *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

Effect of Initiative and Referendum.

Enactment of initiated salary act by voters of a certain county, providing for salary of county judge and directing that he should be road commissioner and authorizing the quorum court to make a reasonable appropriation from road funds for expenses, was authorized by the initiative and referendum amendment notwithstanding this section. *White v. Chotard*, 202 Ark. 692, 152 S.W.2d 552 (1941).

Elections.

The act providing separate primaries for federal and state offices was not in violation of this section. *Adams v. Whittaker*, 210 Ark. 298, 195 S.W.2d 634 (1946).

Under this section, the county court has exclusive jurisdiction over election contests questioning the validity of elections for the construction of a county hospital. *Curry v. Dawson*, 238 Ark. 310, 379 S.W.2d 287 (1964).

There is nothing unreasonable, especially in the light of Amendment 50, in the legislature's conclusion that the purchase of voting machines is a permissible election expense and it is not necessary that the board of election commissioners get the approval of the county court. *Walsh v. Campbell*, 240 Ark. 1034, 405 S.W.2d 264 (1966).

—Local Option.

Act authorizing county court to order local option election was not an unconstitutional delegation of executive or legislative authority to the judiciary. *Yarbrough v. Beardon*, 206 Ark. 553, 177 S.W.2d 38 (1944).

The county court has jurisdiction in contests of local option elections on the liquor question, and the county initiative measures did not change to the chancery court to hear and determine contests. *Ward v. Boone*, 231 Ark. 655, 331 S.W.2d 875 (1960).

Eminent Domain.

The General Assembly was within its province in authorizing the county court to exercise the power of eminent domain to give access to landlocked tracts, and it clearly did so in § 27-66-401. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

Ferries.

Where a river constitutes the boundary between two counties, an application for a ferry franchise made to the county court of one county which is denied becomes res judicata and cannot be renewed in the court of the other county. *Caldwell v. Fitzhugh*, 175 Ark. 801, 300 S.W. 395 (1927).

Fiscal Agent.

The county court is the fiscal agent of the county. *Jackson v. Madison County*, 175 Ark. 826, 300 S.W. 924 (1927).

Jurisdiction.

The county court should have jurisdiction only when the subjects enumerated in this section are directly affected. *Price v. Madison County Bank*, 90 Ark. 195, 118 S.W. 706 (1909); *Carroll County Bank v. State*, 95 Ark. 194, 128 S.W. 1042 (1910).

Contracts to employ home demonstration agent and farm demonstration agent are within the exclusive jurisdiction of the county court and the fact that the quorum court made an appropriation for the purpose has no binding effect upon the county, unless the county court enters into the contract or thereafter ratifies action of county judge in doing so. *Watson v. Union County*, 193 Ark. 559, 101 S.W.2d 791 (1937).

Interpretation of § 26-26-301 as providing an exception for mandamus proceed-

ings to the exclusive jurisdiction of county courts over matters relating to county taxes provided in this section is unconstitutional as the general assembly cannot alter by statute the jurisdiction granted or withheld by the constitution. *Young v. Jamison*, 309 Ark. 187, 828 S.W.2d 831 (1992).

A circuit court could only have jurisdiction of a county taxation matter as a result of Ark. Const., Art. 7, § 33, which provides for appeals to be taken from county court to circuit court. *Young v. Jamison*, 309 Ark. 187, 828 S.W.2d 831 (1992).

Legislative Authority.

The legislature may prescribe how the jurisdiction may be exercised. *Parkview Land Co. v. Road Imp. Dist. No. 1*, 92 Ark. 93, 122 S.W. 241 (1909).

This section does not operate to deprive the General Assembly of the power to impose duties upon counties and to require counties to pay therefore. *Crawford County v. Van Buren*, 201 Ark. 798, 146 S.W.2d 914 (1941).

Statute requiring a county judge, on petition, to appoint three property owners to employ and contract with appraisers to appraise property in the county violates this section vesting the county court with exclusive original jurisdiction in all matters relating to the disbursement of money for county purposes. *Campbell v. Little Rock School Dist.*, 222 Ark. 615, 262 S.W.2d 267 (1953) (decision prior to Const. Amend. 55, § 3).

Law providing for reimbursement of state hospital by county for mental examination of persons charged with crime and awaiting trial does not violate this section. *Campbell v. Arkansas State Hosp.*, 228 Ark. 205, 306 S.W.2d 313 (1957).

Levees.

County courts have original jurisdiction of a proceeding to condemn a right of way for a levee. *Board of Dirs. v. Redditt*, 79 Ark. 154, 95 S.W. 482 (1906).

Special acts creating levee districts are valid. *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912).

Liquor License.

County courts have jurisdiction to determine contest on question of liquor license. *Freeman v. Lazarus*, 61 Ark. 247, 32 S.W. 680 (1895).

Local Concerns.

Local concerns over which county courts have exclusive jurisdiction are those which relate specially to county affairs and not the formation of towns and cities or the charge of their boundaries. *City of Little Rock v. Town of N. Little Rock*, 72 Ark. 195, 79 S.W. 785 (1904).

The legislature has no authority to consider the merits of various local affairs. It can determine the purposes for which a county may expend revenues but it cannot make appropriations of county funds. *State ex rel. State Agric. Sch. Dist. No. 1 v. Craighead County*, 114 Ark. 278, 169 S.W. 964 (1914).

Jurisdiction of matters relating to internal improvements and local concern of a county is given to the county court and not to the county judge. *Needham v. Garner*, 233 Ark. 1006, 350 S.W.2d 194 (1961).

Minors.

The exercise of exclusive jurisdiction over juveniles is not a permissible function of the county courts under this section and Ark. Const., Art. 7, § 1, but since county courts have exercised jurisdiction over juveniles in the past under color of law, their proceedings and judgments may not be collaterally attacked. *Walker v. Arkansas Dep't of Human Servs.*, 291 Ark. 43, 722 S.W.2d 558 (1987).

Multi-County Industrial Development.

There appears to be no reason why the disbursement of bond proceeds under Bicounty Industrial Development Act should not be subject to the same safeguards as other revenues or how two counties should encounter any more legal difficulties in disbursing bond proceeds than one county would have. *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961).

Municipal Corporations.

The legislature may vest in the county court the power to form and organize municipal corporations. *Foreman v. Marianna*, 43 Ark. 324 (1884).

Prisons.

A statute fixing the amount a jailor may charge for feeding prisoners is valid. *Cain v. Woodruff County*, 89 Ark. 456, 117 S.W. 768 (1909).

Property.

The Constitution vests exclusive juris-

diction over county property in the county court so that a deed executed by the county judge purporting to convey a tract of county property was void from the outset and two-year limitation on bringing taxpayer's suits to cancel improperly made conveyances, being curative in nature, could not remedy such a defect. *Maroney v. Universal Leasing Corp.*, 263 Ark. 8, 562 S.W.2d 77 (1978).

Quorum Court.

Sheriff is entitled to appoint deputy to work with Junior Deputy Sheriffs League if quorum court makes an appropriation to pay the salary of the deputy and county court is required to allow deputy's claim for salary. *Parker v. Adkins*, 223 Ark. 455, 266 S.W.2d 799 (1954).

Roads and Bridges.

After the levying court has made an appropriation for building a bridge, the county court composed of the county judge alone may proceed with the construction thereof. *Hilger v. Chrisp*, 98 Ark. 490, 136 S.W. 660 (1911).

County court has jurisdiction, on the petition of property owners, to create a road improvement district. *Road Imp. Dist. No. 2 v. Winkler*, 102 Ark. 553, 145 S.W. 209 (1912).

The county court may order portion of road tax collected in a city paid into the treasury thereof. *Sanderson v. Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912).

A bridge wholly within a county may be the subject of an improvement district. *Board of Dirs. v. Collier*, 104 Ark. 425, 149 S.W. 66 (1912).

A drainage district may not compel a county judge to build a bridge made necessary by the construction of a ditch. *Western Clay Drainage Dist. v. Clay County*, 117 Ark. 334, 174 S.W. 536 (1915).

The legislature may not take away jurisdiction of the county court over expenditure of an optional road tax raised under the general revenue clause of the Constitution. *Town of El Dorado v. Union County*, 122 Ark. 184, 182 S.W. 899 (1916).

The jurisdiction of the county courts is not invaded by acts which provide for commissioners to supervise roads with the concurrence of the County Court. *Sallee v. Dalton*, 138 Ark. 549, 213 S.W. 762 (1919); *Summers v. Conway & Damascus Road Imp. Dist.*, 139 Ark. 277, 213 S.W. 775

(1919); *Hamby v. Pittman*, 139 Ark. 341, 213 S.W. 755 (1919).

While the legislature may impose a county privilege tax on those who use motor drawn vehicles in the county, it cannot provide that the commissioners of the road improvement district in the county may apportion the funds to the different districts, as this would deprive the county court of its jurisdiction over the funds so collected. *State v. Berry*, 158 Ark. 84, 249 S.W. 572 (1923).

The legislature may authorize the county court either to build bridges at public expense or to grant to some other person or corporation the right to build a toll bridge. *White River Bridge Co. v. Hurd*, 159 Ark. 652, 252 S.W. 917 (1923).

The legislature may authorize the commissioners of a road improvement district to make immaterial changes from the route designated in the act without offending against this provision of the Constitution. *Wimberly v. Road Imp. Dist. No. 7*, 161 Ark. 79, 255 S.W. 556 (1923).

An act creating a road district between two designated points, but empowering the commissioners to build the road on a route other than that designated in the act, is void. *Haley v. Sullivan*, 162 Ark. 59, 257 S.W. 727 (1924).

A statute providing that the three-mill road tax levied in a road district may be paid to the treasurer of the district is valid. *Adkins v. Harrington*, 164 Ark. 280, 261 S.W. 626 (1924).

The county court is vested with exclusive jurisdiction in matters relating to county roads and may open up public roads across a railroad's right-of-way. *Kansas City S.R.R. v. Sevier County*, 171 Ark. 900, 286 S.W. 1035, 287 S.W. 404 (1926).

This section does not render invalid an act authorizing the Highway Commission to build a toll bridge across a navigable stream to connect existing highways. *Fulton Ferry & Bridge Co. v. Blackwood*, 173 Ark. 645, 293 S.W. 2 (1927).

The Railroad Commission (now Public Service Commission) is without jurisdiction to hear a petition to regulate and fix tolls of bridges not alleged to have been taken over as part of the state highway system; such jurisdiction being vested in the county court. *Arkansas Railroad Comm'n v. Bovay*, 174 Ark. 1057, 298 S.W. 331 (1927).

This section has no application to state highways. *Connor v. Blackwood*, 176 Ark. 139, 2 S.W.2d 44 (1928).

Counties have original and exclusive jurisdiction in all matters relating to the public roads and this jurisdiction, when invoked and exercised, is that of a court of superior jurisdiction with all attendant presumptions. *Burrow v. Floyd*, 193 Ark. 220, 99 S.W.2d 573 (1936).

County courts have authority to lay out roads, but have no authority to take the property without paying for it. *Prewitt v. Warfield*, 203 Ark. 137, 156 S.W.2d 238 (1941).

Statute providing for acquiring right-of-ways for state highway purposes upon denial of petition by county court and authorizing deduction of one-half the cost from payments due county from State Highway Fund or state revenue to the county highway fund was held not violative of this provision since revenue involved is a fund arising from a state tax and not a county tax. *Arkansas State Hwy. Comm'n v. Pulaski County*, 205 Ark. 395, 168 S.W.2d 1098 (1943).

Where there is a conflict over the exercise of jurisdiction over roads in an unincorporated portion of the county between the county court and any creature of the legislature, the latter must give way. *Butler v. City of Little Rock*, 231 Ark. 834, 332 S.W.2d 812 (1960).

Since there was no order of taking in suit to enjoin county judge from condemnation of right of way across land, the question of capriciousness, arbitrary action, or abuse of discretion was not before the Supreme Court on appeal from chancery court's denial of petition. *Mann v. Ball*, 234 Ark. 1122, 356 S.W.2d 643 (1962).

When a landowner filed her petition for injunction, the construction of the road was an accomplished fact; thus, her only remedy against the county was to file a claim in the county court for just compensation for a completed taking, inasmuch as exclusive jurisdiction of defendant's claim for compensation was vested in the county court as a matter relating to county roads, and the county could not be sued to recover this compensation by inverse condemnation proceedings. *Chamberlain v. Newton County*, 266 Ark. 516, 587 S.W.2d 4 (1979).

Damage to property owner was matter

"relating to ... roads" within the language of this section. *Chestnut v. Norwood*, 292 Ark. 498, 731 S.W.2d 200 (1987).

Earlier state constitutions placed jurisdiction of county roads under the county court. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

The separation of powers doctrine was not violated by allowing the county court to exercise jurisdiction over roads within a city. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

School Districts.

A statute conferring on county boards of education power to form new school districts or change the boundaries of old ones is valid. *Mitchell v. Directors of School Dist. No. 15*, 153 Ark. 50, 239 S.W. 371 (1922).

Sebastian County.

The county court of the Ft. Smith District and the county court of the Greenwood District of Sebastian County each has exclusive jurisdiction of the matters mentioned in this section, each as completely as if they were held in separate counties, but neither having jurisdiction over the county as a whole as to such matters. *Scaramuzza v. McLeod*, 207 Ark. 855, 183 S.W.2d 55 (1944).

Where an order of the county court of the Greenwood District directed a local option election to be held not only in that district but in the entire county, and the county court of the Ft. Smith District ordered likewise, but where separate ballots were prepared for each district and they voted separately and separate returns were made by each district, these showing that one district voted wet, the other dry, the vote of the one district was not affected by the vote of the other. *Scaramuzza v. McLeod*, 207 Ark. 855, 183 S.W.2d 55 (1944).

Taxes.

Order of circuit court, on appeal from county court, by which circuit court retained jurisdiction of road tax fund for future apportionment, was held a usurpation of the county court's jurisdiction and therefore invalid and void. *Burrow v. Floyd*, 193 Ark. 220, 99 S.W.2d 573 (1936).

Publicity Act requiring publication of county claims in newspaper is not unconstitutional on ground that act deprived county court of exclusive original jurisdiction

tion in matters relating to county taxes. *Jeffery v. Trevathan*, 215 Ark. 311, 220 S.W.2d 412 (1949).

The statute providing for the appointment of professional appraisers by the county court to appraise property as an aid to the tax assessor upon petition of assessors, members of county equalization board and members of municipal councils and school boards in the area was not in contravention of this section on grounds that the statute inhibited the expenditure of county taxes since county court had discretion as to acting on petition and could disapprove contract appointing such assessors. *Strawn v. Campbell*, 226 Ark. 449, 291 S.W.2d 508 (1956).

The action of county court could not have been dictated by mandamus, injunction, or other process of either chancery or circuit court when there was no suggestion that the county judge had acted, attempted, or proposed to act in any capacity other than as presiding judge in tax assessment matter, that any wrongful diversion of public funds or fraud was involved, or that tax being itself illegal was being levied. *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

Action to recover funds mistakenly paid to school district was not merely a "county tax" matter as such, but rather a matter of overpayment which addressed itself to the chancery court's jurisdiction to correct mistakes, and so county court was not the only court with jurisdiction to hear the case. *Carroll County v. Eureka Springs Sch. Dist. # 21*, 292 Ark. 151, 729 S.W.2d 1 (1987).

It is settled law that county courts have exclusive jurisdiction in all matters relating to county taxes under this section and § 14-14-1105; however, a court of equity may grant relief against a void or illegal tax assessment. *Pockrus v. Bella Vista Village Property Owners Ass'n*, 316 Ark. 468, 872 S.W.2d 416 (1994).

Although illegal taxes can be enjoined by a court of equity, if the taxes complained of are not themselves illegal, a suit for illegal exaction will not lie in chancery court; a flaw in the assessment of collection procedure, no matter how serious from the taxpayer's point of view, does not make the exaction itself illegal, and any relief from such county taxes must be sought in county court. *Pockrus v.*

Bella Vista Village Property Owners Ass'n, 316 Ark. 468, 872 S.W.2d 416 (1994).

Where taxpayer is granted an exemption from taxation filed in a county court pursuant to this section, the county may appeal to the circuit court from the order of the county court pursuant to Ark. Const., Art. 7, § 33, and §§ 16-67-201 and 26-27-318, but the assessor should join in the appeal. *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

The county court, and not the circuit court, had jurisdiction over a matter pertaining to the assessment of a penalty resulting from the delinquent payment of county taxes. *Villines v. Pulaski County Bd. of Educ.*, 341 Ark. 125, 14 S.W.3d 510 (2000).

Vagrancy.

This section did not abrogate the jurisdiction of municipal courts to punish vagrancy. The jurisdiction it confers extends only to such matters of police regulation as are designed to prevent vagrants from becoming burdensome to the county. *Brizzolari v. State*, 37 Ark. 364 (1881).

Cited: *Gordon v. Woodruff County*, 217 Ark. 653, 232 S.W.2d 832 (1950); *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974); *In re Giurbino*, 258 Ark. 277, 524 S.W.2d 236 (1975); *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976); *Carter v. Clausen*, 263 Ark. 344, 565 S.W.2d 17 (1978); *Sharp County v. Northeast Ark. Planning & Consulting Co.*, 275 Ark. 172, 628 S.W.2d 559 (1982); *Pogue v. Cooper*, 284 Ark. 105, 679 S.W.2d 207 (1984); *Venhaus v. State ex rel. Lofton*, 285 Ark. 23, 684 S.W.2d 252 (1985); *Bell v. Crawford County*, 287 Ark. 251, 697 S.W.2d 910 (1985); *Lakey v. Lakey*, 18 Ark. App. 182, 712 S.W.2d 663 (1986); *Clark v. Clark*, 19 Ark. App. 280, 719 S.W.2d 712 (1986); *Arkansas Dep't of Human Servs. v. Ross-Lawhon*, 290 Ark. 578, 721 S.W.2d 658 (1986); *Clark v. Clark*, 19 Ark. App. 280, 725 S.W.2d 1 (1987); *McCormac v. McCormac*, 304 Ark. 89, 799 S.W.2d 806 (1990); *McIntosh v. Southwestern Truck Sales*, 304 Ark. 224, 800 S.W.2d 431 (1990); *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997); *Lott v. Circuit Court*, 328 Ark. 596, 945 S.W.2d 922 (1997); *Hoyle v. Faucher*, 334 Ark. 529, 975 S.W.2d 843 (1998).

§ 29. County judge — Election — Term — Qualifications.

The Judge of the County Court shall be elected by the qualified electors of the county for the term of two years. He shall be at least twenty-five years of age, a citizen of the United States, a man of upright character, of good business education, and a resident of the State for two years before his election; and a resident of the county at the time of his election, and during his continuance in office.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of constitutional and statutory “term limits” provisions. 112 ALR 5th 1.

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

CASE NOTES

Additional Qualifications.
Qualifications fixed by this section to be county judge in this state inferentially prohibit the legislature from fixing additional qualifications. Mississippi County

v. Green, 200 Ark. 204, 138 S.W.2d 377 (1940).
Cited: Barnett v. Sutterfield, 129 Ark. 461, 196 S.W. 470 (1917); In re Giurbino, 258 Ark. 277, 524 S.W.2d 236 (1975).

§ 30. Quorum court — County judge and justices of peace.

The Justices of the Peace of each county shall sit with and assist the County Judge in levying the county taxes, and in making appropriations for the expenses of the county, in the manner to be prescribed by law; and the County Judge, together with a majority of said Justices, shall constitute a quorum for such purposes; and in the absence of the County Judge a majority of the Justices of the Peace may constitute the court, who shall elect one of their number to preside. The General Assembly shall regulate by law the manner of compelling the attendance of such quorum.

RESEARCH REFERENCES

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

CASE NOTES

ANALYSIS

Jurisdiction.
Legislative authority.
State taxes.
Violation of authority.
Waiver of disqualification.

Jurisdiction.
The levying of taxes and making appropriations for county purposes must be by the full court composed of the county

judge and justices of the peace, but the making of contracts and allowance of expenses must be by the court when held by the judge alone. Ex parte Howell, 36 Ark. 466 (1880); Lawrence County v. Coffman, 36 Ark. 641 (1880); Hilger v. Chrisp, 98 Ark. 490, 136 S.W. 660 (1911).

Legislative Authority.
The legislature cannot authorize or validate an appropriation by the levying

court for other than county purposes. *Cotham v. Coffman*, 111 Ark. 108, 163 S.W. 1183 (1914); *State ex rel. State Agric. Sch. Dist. No. 1 v. Craighead County*, 114 Ark. 278, 169 S.W. 964 (1914).

This section does not operate to deprive the General Assembly of the power to impose duties upon counties and to require counties to pay therefor. *Crawford County v. Van Buren*, 201 Ark. 798, 146 S.W.2d 914 (1941).

State Taxes.

This section provides for the levying of taxes for county purposes and not for all taxes imposed in the county since taxes for state purposes are levied by the legislature. *Porter v. Ivy*, 130 Ark. 329, 197 S.W. 697 (1917).

Violation of Authority.

There is no provision in law allowing a

quorum court to turn over to the county judge a sum of money "to use as he sees fit and deems necessary," and such an appropriation is invalid. *Martin v. Bratton*, 223 Ark. 159, 264 S.W.2d 635 (1954).

Waiver of Disqualification.

Where county judge and relatives within fourth degree of consanguinity sign petition for local option, remonstrators waive disqualification of the court under the constitution prohibiting any judge from presiding over a trial in which he is interested if they proceed to trial without filing a motion for disqualification of the court. *Nowlin v. Kreis*, 213 Ark. 1027, 214 S.W.2d 221 (1948).

Cited: *Jackson County v. Nuckolls*, 102 Ark. 166, 143 S.W. 1065 (1912); *Jeffery v. Trevathan*, 215 Ark. 311, 220 S.W.2d 412 (1949).

§ 31. County court — Terms.

The terms of the County Courts shall be held at the times that are now prescribed for holding the Supervisors' Courts, or may hereafter be prescribed by law.

RESEARCH REFERENCES

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

§ 32. [Repealed.]

Publisher's Notes. This section, concerning courts of common pleas, was re-

pealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

RESEARCH REFERENCES

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

CASE NOTES

Special Judge.

The Governor is authorized to appoint a special judge of a court of common pleas to try a case in which the judge of that court is disqualified. *Beauman v. Wells, Fargo &*

Co. Express, 77 Ark. 152, 91 S.W. 13 (1905).

Cited: *Lewis v. J.C. Pearson Co.*, 118 Ark. 271, 176 S.W. 160 (1915).

§ 33. Appeals from county and common pleas courts.

Appeals from all judgments of County Courts or Courts of Common Pleas, when established, may be taken to the Circuit Court under such restrictions and regulations as may be prescribed by law.

CASE NOTES

ANALYSIS

In general.
Absolute right.
Appeal by county.
Common pleas courts.
Invalid election.
Jurisdiction.
Legislative authority.
Mandamus.
Trial de novo.

In General.

This section is authority for appeals from County Court to Circuit and the fixing of a time limit for an appeal. *Hughes v. Jackson*, 213 Ark. 243, 210 S.W.2d 312 (1948).

An interested citizen and taxpayer while not a party litigant in a county court suit granting an order for a certain county road was such an interested party as to have the right to appeal from such order and upon denial of such right of appeal his petition to be permitted to intervene and become a party to such action should have been allowed and on its denial he had the right to appeal from the county court's ruling at any time within six months. *Garner v. Greene County*, 229 Ark. 174, 313 S.W.2d 785 (1958).

Absolute Right.

The right to appeal is absolute without regard to merits, and if the county court refuse an appeal, the remedy is by mandamus to compel it to discharge a duty in the performance of which it has no discretion. *Pettigrew v. Washington County*, 43 Ark. 33 (1884).

In special proceedings where no provision is made for appeal by statute, appeal may be taken as an absolute right. *McCullough v. Blackwell*, 51 Ark. 159, 10 S.W. 259 (1888); *Huddleston v. Coffman*, 90 Ark. 219, 118 S.W. 1010 (1909).

Under authority of this section, appeals have been granted as a matter of constitutional right and no distinction has been made between administrative matters

and judicial causes. *Horn v. Baker*, 140 Ark. 168, 215 S.W. 600 (1919); *Barker v. Wist*, 163 Ark. 511, 260 S.W. 408 (1924).

County court's order ordering local option election on proposition of sale of liquor, upon petition of 35 per cent of the qualified voters in the county, was held not subject to collateral attack by suit in equity to enjoin the election, there being a complete remedy at law by appeal even though act does not specifically provide for a review of the county court's findings or judgment. *Swilling v. Biffle*, 192 Ark. 608, 93 S.W.2d 328 (1936).

Eminent domain damages can be fixed or readjusted upon conditions occurring subsequent to trial and before judgment by the circuit court since it tries appeals from the county court de novo. *Pulaski County v. Horton*, 224 Ark. 864, 276 S.W.2d 706 (1955).

Appeal by County.

Where taxpayer is granted an exemption from taxation filed in a county court pursuant to Ark. Const., Art., 7, § 28, the county may appeal to the circuit court from the order of the county court pursuant to this section and §§ 16-67-201 and 26-27-318, but the assessor should join in the appeal. *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

Common Pleas Courts.

The statute creating the common pleas court will be followed in taking an appeal therefrom. *Ferguson v. Doxey*, 33 Ark. 663 (1878); *Kurtz v. Dunn*, 36 Ark. 648 (1880).

Invalid Election.

There is no statutory or other authority for a trial court to direct an election commission to call a new election after an invalid previous election. *King v. Davis*, 324 Ark. 253, 920 S.W.2d 488 (1996).

Jurisdiction.

The circuit court acquires jurisdiction on appeal notwithstanding irregularities of procedure which do not affect the rights

of parties on the merits. *Hempstead County v. Howard County*, 51 Ark. 344, 11 S.W. 478 (1888).

Where plaintiff contends there is a procedural flaw in county's application of assessments, a circuit court would only have jurisdiction if involving an appeal from county court. *Scott County v. Frost*, 305 Ark. 358, 807 S.W.2d 469 (1991).

A circuit court could only have jurisdiction of a county taxation matter as a result of this section, which provides for appeals to be taken from county court to circuit court. *Young v. Jamison*, 309 Ark. 187, 828 S.W.2d 831 (1992).

Pursuant to Ark. Const., Art. 7, § 14 and this section, and the circuit court had subject matter jurisdiction to hear attorney's appeal of fee awarded in municipal court. *Johnson v. State*, 312 Ark. 38, 846 S.W.2d 662 (1993).

Legislative Authority.

The General Assembly has the right to limit time for appeals, and to designate within reason, when the record should be completed and lodged with the circuit court. *Pike v. Stuttgart*, 200 Ark. 1010, 142 S.W.2d 233 (1940).

Mandamus.

Where comptroller prepared an accounting that showed the amounts that

were to be deducted from employees' compensation and leave time in the future, county judge intended to enforce that document in the future, and suit was to prevent the county judge and comptroller from performing that act, then action amounted to an action for mandamus which is properly brought in circuit court. *Villines v. Lee*, 321 Ark. 405, 902 S.W.2d 233 (1995).

Trial De Novo.

Where circuit court conducted trial of case appealed without reference to error in county court and without being bound in any way by county court's conclusions of fact or law, right of appellant to trial de novo was not violated. *Cox v. Farrell*, 292 Ark. 177, 728 S.W.2d 954 (1987).

Cited: *Rooker v. City of Little Rock*, 234 Ark. 372, 352 S.W.2d 172 (1961); *Vance v. Johnson*, 238 Ark. 1009, 386 S.W.2d 240 (1965); *Horton v. McConnell*, 256 Ark. 84, 506 S.W.2d 540 (1974); *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978); *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997); *Lott v. Circuit Court*, 328 Ark. 596, 945 S.W.2d 922 (1997); *Campbell v. City of Cherokee Village W.*, 333 Ark. 310, 969 S.W.2d 179 (1998).

§ 34. [Repealed.]

Publisher's Notes. This section, concerning probate courts, was repealed by Ark. Const. Amend. 80, § 22(A), effective

July 1, 2001. This section, as amended by Ark. Const. Amend. 24, § 1, was repealed by Ark. Const. Amend. 80, § 22(B).

§ 35. [Repealed.]

Publisher's Notes. This section, concerning appeals from probate court, was repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001. This sec-

tion, as amended by Ark. Const. Amend. 24, § 2, was repealed by Ark. Const. Amend. 80, § 22(B).

§ 36. Special judges of county or probate courts.

Whenever a Judge of the County or Probate Court may be disqualified from presiding, in any cause or causes pending in his court, he shall certify the facts to the Governor of the State, who shall thereupon commission a special judge to preside in such cause or causes during the time said disqualification may continue, or until such cause or causes may be finally disposed of.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

CASE NOTES

ANALYSIS

Certificate of disqualification.

Common pleas.

Election of special judge by counsel.

Certificate of Disqualification.

Until the county judge certifies his disqualification, the Governor has no authority to appoint a special county judge. *Reed v. Bradford*, 141 Ark. 201, 217 S.W. 11 (1919).

Common Pleas.

Where the county judge is disqualified in a case pending in the common pleas

court, the Governor may appoint a special judge. *Beauman v. Wells, Fargo & Co. Express*, 77 Ark. 152, 91 S.W. 13 (1905).

Election of Special Judge by Counsel.

Where the judge of equity has been disqualified from acting as probate judge, this section does not prevent election of a special judge by counsel in the case to hear the probate matter because of the subsequently adopted Constitutional Amendment No. 24, § 1. *Petty v. Clarke*, 256 Ark. 412, 507 S.W.2d 700 (1974).

§ 37. Compensation of county judge — Powers during absence of circuit judge.

The County Judge shall receive such compensation for his services as presiding Judge of the County Court, as Judge of the Court of Probate and Judge of the Court of Common Pleas, when established, as may be provided by law. In the absence of the Circuit Judge from the county, the County Judge shall have power to issue orders for injunctions and other provisional writs in their counties, returnable to the court having jurisdiction; provided, that either party may have such order reviewed by any superior Judge in vacation in such manner as shall be provided by law. The County Judge shall have power, in the absence of the Circuit Judge from the county, to issue, hear and determine writs of habeas corpus, under such regulations and restrictions as shall be provided by law.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

CASE NOTES

Power to Issue Writs.

The county judge may issue such writs only where an action is pending in another court. *Randolph v. Abbott*, 84 Ark. 341, 105 S.W. 576 (1907).

Cited: *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

§ 38. Justices of the peace — Election — Term — Oath.

The qualified electors of each township shall elect the Justices of the Peace for the term of two years; who shall be commissioned by the Governor, and their official oath shall be indorsed on the commission.

CASE NOTES**Invalid Election.**

There is no statutory or other authority for a trial court to direct an election com-

mission to call a new election after an invalid previous election. *King v. Davis*, 324 Ark. 253, 920 S.W.2d 488 (1996).

§ 39. [Repealed.]

Publisher's Notes. This section, concerning number of justices of the peace in each township, was repealed by Ark.

Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 40. [Repealed.]

Publisher's Notes. This section, concerning jurisdiction of justices of the

peace, was repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 41. Qualifications of justice of peace.

A Justice of the Peace shall be a qualified elector and a resident of the township for which he is elected.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of constitutional and statutory "term limits" provisions. 112 ALR 5th 1.

CASE NOTES**Residency Requirement.**

A party nominee for justice of the peace, who was a qualified elector and a resident of the district at the time of his nomination, was qualified as a candidate in the

general election, even though the nominee had temporarily moved outside his district into a house he owned as investment property. *Booth v. Smith*, 261 Ark. 838, 552 S.W.2d 19 (1977).

§ 42. [Repealed.]

Publisher's Notes. This section, concerning appeals from justices of the peace,

was repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 43. Corporation courts — Jurisdiction. [Repealed effective January 1, 2005.]

Corporation Courts, for towns and cities, may be invested with jurisdiction concurrent with Justices of the Peace in civil and criminal matters, and the General Assembly may invest such of them as it may deem expedient with jurisdiction of any criminal offences not punish-

able by death, or imprisonment in the penitentiary, with or without indictment, as may be provided by law; and, until the General Assembly shall otherwise provide, they shall have the jurisdiction now provided by law.

Publisher's Notes. Sections 1-18, 20-22, 24, 25, 32, 34, (as amended by Ark. Const. Amend. 24, § 1), 35 (as amended by Ark. Const. Amend. 24, § 2), 39, 40, 42, 44, 45 and 50 of Ark. Const., Art. 7, were repealed by Ark. Const. Amend. 80, § 22, effective July 1, 2001. Ark. Const., Art. 7, § 43 is repealed effective January 1, 2005. Ark. Const. Amend. 58, § 1, was repealed

by Ark. Const. Amend. 80, § 22(c), effective July 1, 2001. Ark. Const. Amend. 64, § 1, is repealed effective January 1, 2005. Ark. Const. Amend. 77, § 1, was repealed effective July 1, 2001.

Cross References. Municipal court jurisdiction, Const., Amend. 64; § 16-17-206.

RESEARCH REFERENCES

Ark. L. Rev. The Arkansas Judiciary at the Crossroads, 17 Ark. L. Rev. 259.

UALR L.J. Small Claims in Arkansas: A Judicial Comment, Cole, 1 UALR L.J. 39.

Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

ANALYSIS

Contracts.

Jurisdiction of municipal courts.

—Divestment of jurisdiction.

Jurisdictional amount.

Statutory penalties and liabilities.

Contracts.

Suits to recover damages for doing what was denounced as illegal by the Emergency Price Control Act were not suits "on contract" so as to be cognizable in the municipal court. *Bynum v. Patty*, 207 Ark. 1084, 184 S.W.2d 254 (1944).

Since, under this section, municipal courts are vested with the jurisdiction of justice of the peace courts, the legislature is powerless to confer jurisdiction on such courts in matters of contract in excess of the \$300 limitation exclusive of interest provided as to justice of the peace courts by Ark. Const., Art. 7, § 40. *United Loan & Inv. Co. v. Chilton*, 225 Ark. 1037, 287 S.W.2d 458 (1956).

Statute dealing with jurisdiction of municipal courts was unconstitutional and void as far as it attempted to invest municipal courts with jurisdiction to hear and determine matters of contract where the amount in controversy exceeded \$300 exclusive of interest. *United Loan & Inv.*

Co. v. Chilton, 225 Ark. 1037, 287 S.W.2d 458 (1956).

Where a Small Claims Procedure Act provision stated that if a contract was to be performed in a particular county then a suit based on such a contract could be maintained either in that county or in the county where the defendant resides, that provision gave the municipal court of county A personal jurisdiction over the defendant who was a resident of county B in a \$300 contract action brought by a resident of county A to recover on a contract which was to be performed in county A. *Peel v. Kelley*, 268 Ark. 90, 594 S.W.2d 11 (1980).

Jurisdiction of Municipal Courts.

The jurisdiction of a municipal court over misdemeanors is exclusive of justices of the peace in the township wherein it sits but concurrent in all other townships within its jurisdiction. *Lee v. Watts*, 243 Ark. 957, 423 S.W.2d 557 (1968).

The statutory jurisdiction of municipal courts need not be exactly coextensive with the statutory jurisdiction of justices of the peace; it may be coextensive with whatever jurisdiction could be vested in justices of the peace. *Peel v. Kelley*, 268 Ark. 90, 594 S.W.2d 11 (1980).

Municipal court from city in county A

did not have jurisdiction over criminal offenses committed in county B. *Sexson v. Municipal Court*, 312 Ark. 261, 849 S.W.2d 468 (1993).

—Divestment of Jurisdiction.

Divestment of jurisdiction from the city court is not contrary to this section, which gives the General Assembly authority to set jurisdiction of corporation courts. *City Court v. Tiner*, 292 Ark. 253, 729 S.W.2d 399 (1987).

Jurisdictional Amount.

Municipal courts cannot be given jurisdiction greater than the constitutional limit for justices of the peace, which is \$300 in civil cases. *Peel v. Kelley*, 268 Ark. 90, 594 S.W.2d 11 (1980).

Statutory Penalties and Liabilities.

Suits to recover damages for doing what was denounced as illegal by the Emergency Price Control Act were not attempts to recover money obtained by extortion or deceit where the law implies a promise to

repay the amount wrongfully obtained so as to bring them within the civil jurisdiction of the municipal court. *Bynum v. Patty*, 207 Ark. 1084, 184 S.W.2d 254 (1944).

Damages for doing what was denounced as illegal by the Emergency Price Control Act allowed by statute were not enforceable as a quasi-contractual liability on the theory that there was an implied assumption of the burdens of the statute by all parties thereby bringing such suits within the jurisdiction of municipal courts. *Bynum v. Patty*, 207 Ark. 1084, 184 S.W.2d 254 (1944).

Cited: *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974); *Pulaski County Mun. Court v. Scott*, 272 Ark. 115, 612 S.W.2d 297 (1981); *State v. Webb*, 323 Ark. 80, 913 S.W.2d 259 (1996); *State v. Pulaski County Circuit Court*, 326 Ark. 886, 934 S.W.2d 915 (1996); *Smith v. Credit Serv. Co.*, 339 Ark. 41, 2 S.W.3d 69 (1999).

§ 44. [Repealed.]

Publisher's Notes. This section, concerning the Pulaski Chancery Court, was

repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 45. [Repealed.]

Publisher's Notes. This section, concerning the abolishment of separate crim-

inal courts, was repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 46. County executive officers — Compensation of county assessor.

The qualified electors of each county shall elect one Sheriff, who shall be ex-officio collector of taxes, unless otherwise provided by law; one Assessor, one Coroner, one Treasurer, who shall be ex-officio treasurer of the common school fund of the county, and one County Surveyor; for the term of two years, with such duties as are now or may be prescribed by law: Provided, that no per centum shall ever be paid to assessors upon the valuation or assessment of property by them.

RESEARCH REFERENCES

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

CASE NOTES

ANALYSIS

Assessors.

Sheriff and collector.

—Collector.

—Sheriff.

Treasurer.

Assessors.

The appointment of county boards of equalization was not an unconstitutional infringement upon the duties of the assessor. *Pulaski County Bd. of Equalization Cases*, 49 Ark. 618, 6 S.W. 1 (1887).

The office of tax assessor must form a part of any valuation scheme erected by the legislature, but the legislature may prescribe the duties of the office and adopt such methods of valuations as may be deemed expedient. *Hutton v. King*, 134 Ark. 463, 205 S.W. 296 (1918).

The county assessor is a county officer, his salary may be fixed by county under Initiative and Referendum Amendment, and money paid by the state as half of the assessor's salary is not over and above the amount provided by the initiated act. *Dew v. Ashley County*, 199 Ark. 361, 133 S.W.2d 652 (1939).

Sheriff and Collector.

The sheriff and collector hold two offices until the legislature provides otherwise. *Ex parte McCabe*, 33 Ark. 396 (1878); *Durden v. Greenwood Dist.*, 73 Ark. 305, 83 S.W. 1048 (1904); *Vaughan v. Kendall*, 79 Ark. 584, 96 S.W. 140 (1906).

Upon failure of the sheriff to give bond as collector, another may be appointed to fill that office. *Remley v. Matthews*, 84 Ark. 598, 106 S.W. 482 (1907).

In naming the salary of the sheriff and collector at an amount not exceeding a certain sum to be paid annually, the legislature necessarily intended "for the term of office" as fixed by the Constitution. *Rowden v. Fulton County*, 132 Ark. 245, 200 S.W. 1010 (1918).

—Collector.

The legislature may provide for the appointment of a collector by the Governor,

or for filling the office in any other way it may deem proper. *Falconer v. Shore*, 37 Ark. 386 (1881); *Hodges v. Prairie County*, 80 Ark. 62, 95 S.W. 988 (1906).

Office of collector can not be annexed to any office other than that of sheriff. *Marshall v. Holland*, 168 Ark. 449, 270 S.W. 609 (1925).

Assessments of benefits are not taxes and, in the absence of statute, it would not be the duty of the collector to make such collections, and he and his bondsmen would not be liable for failure to collect them. *Moose v. Bartlett*, 169 Ark. 963, 277 S.W. 340 (1925).

A statute creating a separate office of collector and providing for a term of more than two years was unconstitutional. *Oates v. Rogers*, 201 Ark. 335, 144 S.W.2d 457 (1940).

An act authorizing appointment of collector of delinquent personal taxes by delinquent tax board was held not in conflict with this provision as the Constitution leaves the office of collector under the control of the legislature. *Newton v. Edwards*, 203 Ark. 18, 155 S.W.2d 591 (1941).

—Sheriff.

The legislature may vary the duties of a sheriff. *Cain v. Woodruff County*, 89 Ark. 456, 117 S.W. 768 (1909).

Treasurer.

The treasurer is not entitled to a commission on the principal mortgage debt. *Helena Special School Dist. No. 1 v. Kitchens*, 108 Ark. 137, 156 S.W. 441 (1913).

It was assumed that the legislature intended the treasurer to be the custodian of funds where an act for the sale of bonds made no express provision for a custodian of the proceeds. *Black v. Special Sch. Dist. No. 2*, 116 Ark. 472, 173 S.W. 846, 173 S.W. 1104 (1915).

Cited: *Strawn v. Campbell*, 226 Ark. 449, 291 S.W.2d 508 (1956); *Dilday v. State*, 300 Ark. 249, 778 S.W.2d 618 (1989).

§ 47. Constables — Term of office — Certificate of election.

The qualified electors of each township shall elect the Constable for the term of two years, who shall be furnished, by the presiding Judge of

the County Court, with a certificate of election, on which his official oath shall be indorsed.

CASE NOTES

ANALYSIS

Commencement of terms.
Nature of office.

Commencement of Terms.

Commencement of terms may be read-

justed by law. *Hutcheson v. Pitts*, 170 Ark. 248, 278 S.W. 639 (1926).

Nature of Office.

Constable is an executive officer. *State v. Hutt*, 2 Ark. 282 (1840).

§ 48. Commissions of officers.

All officers provided for in this article, except Constables, shall be commissioned by the Governor.

§ 49. Style of process and of indictments.

All writs and other judicial process, shall run in the name of the State of Arkansas, bear test and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

CASE NOTES

ANALYSIS

In general.
Amendment.
Court's control.
Insufficiency.
Style.
Waiver of defects.

In General.

The requirements for informations and indictments are set out in § 16-85-403 and this section. *Archer v. Benton County Circuit Court*, 316 Ark. 477, 872 S.W.2d 397 (1994).

Amendment.

A writ not running in the name of the state is amendable. *Kahn v. Kuhn*, 44 Ark. 404 (1884).

The execution of a stay bond will not defeat the power to amend a writ of execution upon a judgment defective for failure of the clerk to attach his seal. *Hall v. Lackmond*, 50 Ark. 113, 6 S.W. 510 (1887).

Court's Control.

Courts have control over their process. *Hinkle v. Ball*, 34 Ark. 177 (1879); *King v. Clay*, 34 Ark. 291 (1879).

Insufficiency.

The insufficiency of an indictment or information must be challenged prior to trial. *Wetherington v. State*, 319 Ark. 37, 889 S.W.2d 34 (1994).

Style.

Each count of the indictment must conclude with the formula, "Against the peace and dignity of the state." *Williams v. State*, 47 Ark. 230, 1 S.W. 149 (1886); *Caldwell v. State*, 295 Ark. 149, 747 S.W.2d 99 (1988).

Each count of an indictment or information must conclude with a contra pacem clause. *Wetherington v. State*, 319 Ark. 37, 889 S.W.2d 34 (1994).

Waiver of Defects.

The defendant may, by his conduct, be estopped to object to the manner in which service is made, but estoppel does not apply where the defect in the summons itself is so substantial as to render the process void. *Storey v. Brewer*, 232 Ark. 552, 339 S.W.2d 112 (1960).

Cited: *Rogers v. State*, 289 Ark. 257, 711 S.W.2d 461 (1986); *Prince v. State*, 304

Ark. 692, 805 S.W.2d 46 (1991); *Hagen v. Richmond v. State*, 320 Ark. 566, 899 S.W.2d 64 (1995); *State*, 315 Ark. 20, 864 S.W.2d 856 (1993);

§ 50. [Repealed.]

Publisher's Notes. This section, concerning vacancies for judicial offices described in Ark. Const., Art. 7, was re-

pealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

§ 51. Appeals from county or municipal allowances — Bond.

That in all cases of allowances made for or against counties, cities or towns, an appeal shall lie to the Circuit Court of the county, at the instance of the party aggrieved, or on the intervention of any citizen or resident and tax payer of such county, city or town, on the same terms and conditions on which appeals may be granted to the Circuit Court in other cases; and the matter pertaining to any such allowance shall be tried in the Circuit Court de novo. In case an appeal be taken by any citizen, he shall give a bond, payable to the proper county, conditioned to prosecute the appeal, and save the county from costs on account of the same being taken.

CASE NOTES

ANALYSIS

Allowance against county.
Appeal.
Equity.
Subject matter jurisdiction.

Allowance against County.

An order of the county court prohibiting the sale of liquors under the three-mile law was not an allowance against the county within the meaning of this section. *Holmes v. Morgan*, 52 Ark. 99, 12 S.W. 201 (1889).

An order of the county court awarding a contract to the lowest bidder was an acceptance of an offer and not an allowance against the county. *Armstrong v. Truitt*, 53 Ark. 287, 13 S.W. 934 (1890).

Appeal.

The claim may be amended in the circuit court so as to supply affidavit of certification. *Saline County v. Kinkead*, 84 Ark. 329, 105 S.W. 581 (1907).

A resident, citizen, or taxpayer has the right to appeal from an order of allowance against the county, regardless of the fact whether he intervened before or after the allowance was made. *Van Hook v. McNeil Monument Co.*, 101 Ark. 246, 142 S.W. 154 (1911); *Ladd v. Stubblefield*, 195 Ark. 261, 111 S.W.2d 555 (1937).

The county court, in passing on a claim presented to it, acts in a judicial capacity. Any citizen may institute suit in behalf of himself and others interested to protect against the enforcement of any illegal exactions and their proper remedy is to appeal to the circuit court. *Arkansas Ass'n of County Judges v. Green*, 232 Ark. 438, 338 S.W.2d 672 (1960).

Equity.

A bill in equity will not lie to prevent the making of an irregular contract as such irregularity may be corrected by proceeding under this section. *Bowman v. Frith*, 73 Ark. 523, 84 S.W. 709 (1905).

Subject Matter Jurisdiction.

Where taxpayer's suit against sheriff was filed and tried in chancery, chancery court had jurisdiction to grant relief in subsequent suit of taxpayer against the county for attorney fees and costs incurred in prosecuting suit against sheriff; subsequent suit was filed in circuit court and transferred to chancery court without objection by the county and without challenge of the subject matter jurisdiction by the county until after a final decree was entered. *Crittenden County v. Williford*, 283 Ark. 289, 675 S.W.2d 631 (1984).

§ 52. Appeals in election contests.

That in all cases of contest for any county, township, or municipal office, an appeal shall lie at the instance of the party aggrieved, from any inferior board, council, or tribunal to the Circuit Court, on the same terms and conditions on which appeals may be granted to the Circuit Court in other cases, and on such appeals the case shall be tried *de novo*.

CASE NOTES

ANALYSIS

In general.

Appeal.

City councils.

In General.

This section does not mean that the legislature cannot authorize a trial in the first instance in the circuit court. *Sumpter v. Duffie*, 80 Ark. 369, 97 S.W. 435 (1906).

Legislature may provide for contests over office of school director before board of education, with right of appeal to circuit court. *Stafford v. Cook*, 159 Ark. 438, 252 S.W. 597 (1923).

Appeal.

In an election contest in the circuit court on appeal, testimony may be heard which was not introduced in the county court. *Williams v. Buchanan*, 86 Ark. 259, 110 S.W. 1024 (1908).

City Councils.

The circuit court has jurisdiction to determine election contests for membership in councils of cities of the first class. *Doherty v. Cripps*, 82 Ark. 529, 102 S.W. 394 (1907).

ARTICLE 8

APPORTIONMENT — MEMBERSHIP IN GENERAL ASSEMBLY

SECTION.

1. Board of apportionment created — Powers and duties.
2. One hundred members in House of Representatives — Apportionment.
3. Senatorial districts — Thirty-five members of Senate.

SECTION.

4. Duties of Board of Apportionment.
5. Mandamus to compel Board of Apportionment to act.
6. Election of Senators and Representatives.

Publisher's Notes. Ark. Const. Amend. 23 rewrote this article. Prior to its amendment, the article read:

"SECTION 1. The House of Representatives shall consist of not less than seventy-three, nor more than one hundred members.

Each County now organized shall always be entitled to one Representative; the remainder to be apportioned among the several Counties according to the number of adult male inhabitants, taking two thousand as the ratio, until the number of Representatives amounts to one hundred, when they shall not be further

increased, but the ratio of representation shall, from time to time, be increased as hereinafter provided; so that the Representatives shall never exceed that number. And until the enumeration of the inhabitants is taken by the United States government, A. D. 1880, the Representatives shall be apportioned among the several counties, as follows:

"The county of Arkansas shall elect one Representative. The county of Ashley shall elect one Representative. The county of Benton shall elect two Representatives. The county of Boone shall elect one Representative. The county of Bradley shall

elect one Representative. The county of Baxter shall elect one Representative. The county of Calhoun shall elect one Representative. The county of Carroll shall elect one Representative. The county of Chicot shall elect one Representative. The county of Columbia shall elect two Representatives. The county of Clark shall elect two Representatives. The county of Conway shall elect one Representative. The county of Craighead shall elect one Representative. The county of Crawford shall elect one Representative. The county of Cross shall elect one Representative. The county of Crittenden shall elect one Representative. The county of Clayton shall elect one Representative. The county of Dallas shall elect one Representative. The county of Desha shall elect one Representative. The county of Drew shall elect one Representative. The county of Dorsey shall elect one Representative. The county of Franklin shall elect one Representative. The county of Fulton shall elect one Representative. The county of Faulkner shall elect one Representative. The county of Grant shall elect one Representative. The county of Greene shall elect one Representative. The county of Garland shall elect one Representative. The county of Hempstead shall elect two Representatives. The county of Hot Spring shall elect three Representatives. The county of Howard shall elect one Representative. The county of Independence shall elect two Representatives. The county of Izard shall elect one Representative. The county of Jackson shall elect one Representative. The county of Jefferson shall elect three Representatives. The county of Johnson shall elect one Representative. The county of Lafayette shall elect one Representative. The county of Lawrence shall elect one Representative. The county of Little River shall elect one Representative. The county of Lonoke shall elect two Representatives. The county of Lincoln shall elect one Representative. The county of Lee shall elect two Representatives. The county of Madison shall elect one Representative. The county of Marion shall elect one Representative. The county of Monroe shall elect one Representative. The county of Montgomery shall elect one Representative. The county of Mississippi shall elect one Representative. The county of Nevada shall elect one Representative. The county of Newton shall elect one Representative.

The county of Ouachita shall elect two Representatives. The county of Perry shall elect one Representative. The county of Phillips shall elect three Representatives. The county of Pike shall elect one Representative. The county of Polk shall elect one Representative. The county of Pope shall elect one Representative. The county of Poinsett shall elect one Representative. The county of Pulaski shall elect four Representatives. The county of Prairie shall elect one Representative. The county of Randolph shall elect one Representative. The county of Saline shall elect one Representative. The county of Sarber shall elect one Representative. The county of Scott shall elect one Representative. The county of Searcy shall elect one Representative. The county of Sebastian shall elect two Representatives. The county of Sevier shall elect one Representative. The county of Sharp shall elect one Representative. The county of St. Francis shall elect one Representative. The county of Stone shall elect one Representative. The county of Union shall elect two Representatives. The county of Van Buren shall elect one Representative. The county of Washington shall elect three Representatives. The county of White shall elect two Representatives. The county of Woodruff shall elect one Representative. The county of Yell shall elect one Representative.

"SEC. 2. The Legislature shall, from time to time, divide the State into convenient Senatorial districts, in such manner that the Senate shall be based upon the adult male inhabitants of the State; each Senator representing an equal number as nearly as practicable, and until the enumeration of the inhabitants is taken by the United States government A. D. 1880, the districts shall be arranged as follows:

"The counties of Greene, Craighead and Clayton shall compose the First district, and elect one Senator.

"The counties of Randolph, Lawrence and Sharp shall compose the Second district, and elect one Senator.

"The counties of Carroll, Boone and Newton shall compose the Third district, and elect one Senator.

"The counties of Johnson and Pope shall compose the Fourth district, and elect one Senator.

"The county of Washington shall com-

pose the Fifth district, and elect one Senator.

"The counties of Independence and Stone shall compose the Sixth district, and elect one Senator.

"The counties of Woodruff, St. Francis, Cross and Crittenden shall compose the Seventh district, and elect one Senator.

"The counties of Yell and Sarber shall compose the Eighth district, and elect one Senator.

"The counties of Saline, Hot Spring and Grant shall compose the Ninth district, and elect one Senator.

"The counties of Pulaski and Perry shall compose the Tenth district, and elect two Senators.

"The county of Jefferson shall compose the Eleventh district, and elect one Senator.

"The counties of Lonoke and Prairie shall compose the Twelfth district, and elect one Senator.

"The counties of Arkansas and Monroe shall compose the Thirteenth district, and elect one Senator.

"The counties of Phillips and Lee shall compose the Fourteenth district, and elect one Senator.

"The counties of Desha and Chicot shall compose the Fifteenth district, and elect one Senator.

"The counties of Lincoln, Dorsey and Dallas shall compose the Sixteenth district, and elect one Senator.

"The counties of Drew and Ashley shall compose the Seventeenth district, and elect one Senator.

"The counties of Bradley and Union shall compose the Eighteenth district, and elect one Senator.

"The counties of Calhoun and Ouachita shall compose the Nineteenth district, and elect one Senator.

"The counties of Hempstead and Nevada shall compose the Twentieth district, and elect one Senator.

"The counties of Columbia and Lafayette shall compose the Twenty-first district, and elect one Senator.

"The counties of Little River, Sevier, Howard, and Polk shall compose the Twenty-second district, and elect one Senator.

"The counties of Fulton, Izard, Marion and Baxter shall compose the Twenty-third district, and elect one Senator.

"The counties of Benton and Madison shall compose the Twenty-fourth district and elect one Senator.

"The counties of Crawford and Franklin shall compose the Twenty-fifth district, and elect one Senator.

"The counties of Van Buren, Conway and Searcy shall compose the Twenty-sixth district, and elect one Senator.

"The counties of White and Faulkner shall compose the Twenty-seventh district, and elect one Senator.

"The counties of Sebastian and Scott shall compose the Twenty-eighth district, and elect one Senator.

"The counties of Poinsett, Jackson and Mississippi shall compose the Twenty-ninth district, and elect one Senator.

"The counties of Clark, Pike and Montgomery shall compose the Thirtieth district, and elect one Senator.

"And the Senate shall never consist of less than thirty, nor more than thirty-five members.

"SEC. 3. Senatorial districts shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senatorial district.

"SEC. 4. The division of the State into Senatorial districts, and the apportionment of Representatives to the several counties, shall be made by the General Assembly at the first regular session after each enumeration of the inhabitants of the State by the Federal or the State government, shall have been ascertained, and at no other time."

Ark. Const. Amend. 45 amended the article as amended by Ark. Const. Amend. 23. See Publisher's Notes following §§ 1-6 for details of amendments to each section.

RESEARCH REFERENCES

Am. Jur. 25 *Am. Jur. 2d*, Elections, § 7 et seq.

C.J.S. 29 *C.J.S.*, Elections, § 53 et seq.

CASE NOTES

ANALYSIS

Purpose.

Effect of amendment.

Purpose.

Purpose of amendment of this article was to secure equal and fair representation in the General Assembly upon the basis of proportionate population. *Butler v. Democratic State Comm.*, 204 Ark. 14, 160 S.W.2d 494 (1942).

Effect of Amendment.

Ark. Const. Amend. 73 did not repeal the two-year term provision of this article. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

Ark. Const. Amend. 73, § 2 does not mention a cap on the total number of years a senator may serve but only states explicitly that a senator may not "serve more than two such four year terms"; Const. Amend. 73 does not touch on the subject of staggered terms for senators and the assignment of two year terms by lot for 18 senators after reapportionment as required by this article. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

The state has a rational basis for pre-

serving the staggered term provisions which have been a part of the constitutions for more than 150 years; there is nothing in the record to suggest there was any intention on the part of the drafters of Const. Amend. 73 or of the voters in adopting it to discriminate against either the candidates or the electorate of any district. The fact that the amendment, when construed in connection with this article, will bring about modest and temporary differences in the total time a senator in a particular district may serve compared to senators of some other districts is simply incidental to the combination of constitutional provisions. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

The disadvantages, if any, to voters of a senate district in being deprived of the opportunity to prolong the incumbency of their senator under Ark. Const. Amend. 73 will be temporary and incidental to the state's interest in preserving the staggered term provisions of this article. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

Cited: *Bernard v. Howell*, 254 Ark. 828, 496 S.W.2d 362 (1973); *Harvey v. Clinton*, 308 Ark. App. 188, 827 S.W.2d 636 (1992).

§ 1. Board of apportionment created — Powers and duties.

A Board to be known as "The Board of Apportionment," consisting of the Governor (who shall be Chairman), the Secretary of State and the Attorney General is hereby created and it shall be its imperative duty to make apportionment of representatives in accordance with the provisions hereof; the action of a majority in each instance shall be deemed the action of said board. [As amended by Const. Amendments. 23 and 45.]

Publisher's Notes. Prior to amendment by Ark. Const. Amend. 45, this section read: "A board to be known as 'The Board of Apportionment,' consisting of the Governor (who shall be Chairman), the Secretary of State and the Attorney Gen-

eral is hereby created and it shall be its imperative duty to make apportionment of representatives and senators in accordance with the provisions hereof; the action of a majority in each instance shall be deemed the action of said Board."

CASE NOTES

Cited: *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

§ 2. One hundred members in House of Representatives — Apportionment.

The House of Representatives shall consist of one hundred members and each county existing at the time of any apportionment shall have at least one representative; the remaining members shall be equally distributed (as nearly as practicable) among the more populous counties of the State, in accordance with a ratio to be determined by the population of said counties as shown by the Federal census next preceding any apportionment hereunder. [As amended by Const. Amends. 23 and 45.]

Publisher's Notes. The provision of this section requiring a representative from each county was held unconstitutional, under the U.S. Constitution, in *Yancey v. Faubus*, 238 F. Supp. 290 (E.D. Ark. 1965), and *Wells v. White*, 274 Ark.

197, 623 S.W.2d 187 (1981), cert. denied, 456 U.S. 906, 102 S. Ct. 1753, 72 L. Ed. 2d 163 (1982).

Ark. Const. Amend. 45 made no change in the language of this section.

CASE NOTES

ANALYSIS

Constitutionality.

Apportionment.

Multi-member districts.

Constitutionality.

Provision requiring each county to have one representative is unconstitutional under U.S. Constitution. *Yancey v. Faubus*, 238 F. Supp. 290 (E.D. Ark. 1965); *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981), cert. denied, 456 U.S. 906, 102 S. Ct. 1753, 72 L. Ed. 2d 163 (1982).

Fact that federal court ruled a portion of this section unconstitutional did not affect the constitutionality of the provision fixing the number of House members at 100. *Faubus v. Kinney*, 239 Ark. 443, 389 S.W.2d 887 (1965); *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

The number of representatives apportioned to northwest Arkansas is within constitutional standards. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

Apportionment.

In apportioning representatives under this provision, a method of equal proportions should be used in preference to other

systems. *Shaw, Autry & Shofner v. Adkins*, 202 Ark. 856, 153 S.W.2d 415 (1941).

The Board of Apportionment was mistaken in seeking that method of apportionment that would cause the least change in the existing representation. *Stevens v. Faubus*, 234 Ark. 826, 354 S.W.2d 707 (1962).

The Board of Apportionment may cross county lines in the formation of districts whenever it is necessary to comply with the Fourteenth Amendment to the United States Constitution. *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981), cert. denied, 456 U.S. 906, 107 S. Ct. 1753, 72 L. Ed. 2d 163 (1982); *Taylor v. Clinton*, 284 Ark. 170, 680 S.W.2d 98 (1984).

After each federal decennial census, the Board of Apportionment must apportion the one hundred members of the House of Representatives to achieve, as nearly as possible, equal population among the one hundred districts. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

A consideration in apportioning the members of the House of Representatives is insuring some voice to all political subdivisions. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

Allowing local communities to express whether they favor retaining multi-member districts or changing to single-member districts, and then reapportioning in accordance with those wishes, is an appropriate function of state government; so long as those wishes do not run afoul of a constitutional or statutory mandate, population variances are within constitutional standards and the Board of Apportionment was not arbitrary simply because it recognized the preference of local communities. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

Multi-Member Districts.

Fact that there were multi-member dis-

tricts in apportionment plan did not make it unconstitutional. *Kelly v. Bumpers*, 340 F. Supp. 568 (E.D. Ark. 1972).

Nothing in this Article prohibits multi-member districts. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

The use of multi-member districts by the Board of Apportionment has never been held to be unconstitutional per se, and the judicial branch cannot impose its judgment on the executive branch solely because it might favor the use of single-member districts. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

§ 3. Senatorial districts — Thirty-five members of Senate.

The Senate shall consist of thirty-five members. Senatorial districts shall at all times consist of contiguous territory, and no county shall be divided in the formation of such districts. "The Board of Apportionment" hereby created shall, from time to time, divide the state into convenient senatorial districts in such manner as that the Senate shall be based upon the inhabitants of the state, each senator representing, as nearly as practicable, an equal number thereof; each district shall have at least one senator. [As amended by Const. Amend. 23.]

Publisher's Notes. The provision of this section prohibiting the division of counties was held unconstitutional, under the U.S. Constitution, in *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981), cert. denied, 456 U.S. 906, 102 S. Ct. 1753, 72 L. Ed. 2d 163 (1982).

An amendment to this section by Ark. Const. Amend. 45 was declared unconstitutional in *Yancey v. Faubus*, 238 F. Supp.

290 (E.D. Ark. 1965). As so amended, the section would have read: "The Senate shall consist of thirty-five members. Senatorial districts as now constituted and existing as heretofore directed by the Supreme Court of Arkansas in the case of *Pickens v. Board of Apportionment*, 220 Ark. 145, 246 S.W.2d 556, shall remain the same and the number of Senators from the districts shall not be changed."

CASE NOTES

ANALYSIS

Constitutionality.
Purpose.
Apportionment.
Challenge of part of plan.
Number of members.

Constitutionality.

Ark. Const., Amend. 45, § 3 was unconstitutional in that it provided for senatorial districts with too great a disparity in senate apportionment in violation of the

equal protection clause. *Yancey v. Faubus*, 238 F. Supp. 290 (E.D. Ark. 1965).

Where federal court held provision of Ark. Const., Amend. 45, § 3, freezing senatorial districts, invalid, provision of Ark. Const., Amend. 45, repealing former provision of Ark. Const., Amend. 23, § 3 as to apportionment of senate, was likewise invalid so that board of apportionment was authorized to reapportion Senate under authority of Ark. Const., Amend. 23 after unconstitutional provisions of Ark. Const.,

Amend. 45 were deleted. *Faubus v. Kinney*, 239 Ark. 443, 389 S.W.2d 887 (1965). See also *Yancey v. Faubus*, 251 F. Supp. 998 (E.D. Ark. 1965), aff'd, 383 U.S. 271, 86 S. Ct. 933, 15 L. Ed. 2d 750 (1966).

This section, both in its original form and as amended by Ark. Const., Amend. 23, and Ark. Const., Amend. 45, is an unconstitutional violation of the one-man, one-vote principle as it relates to the boundaries of various districts in that it provides that senatorial districts may not be constituted so as to divide a county into separate districts. *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981), cert. denied, 456 U.S. 906, 102 S. Ct. 1753, 72 L. Ed. 2d 163 (1982).

Purpose.

This section was intended to divide the state into convenient senatorial districts and to provide for the number of representatives in each county, and expression "from time to time" indicates that this apportionment should be made only when there was a change in the population so that, without a reapportionment, the senator would not represent the number specified. *Bailey v. Abington*, 201 Ark. 1072, 148 S.W.2d 176 (1921).

Apportionment.

This section does not require a geographical change in the senatorial districts after each census but only if shifting population makes it necessary to afford just and equitable and equal representation. *Butler v. Democratic State Comm.*, 204 Ark. 14, 160 S.W.2d 494 (1942).

This section requires a reapportionment after each census but only when, in making the reapportionment, a redivision of the state into senatorial districts is found necessary must an entirely new Senate be elected; if no necessity existed to make changes in the boundaries of senatorial districts, the senators would serve for the respective terms for which they had been elected. *Butler v. Democratic State Comm.*, 204 Ark. 14, 160 S.W.2d 494 (1942).

Supreme Court reapportioned senatorial representation in various districts

when plan submitted by board after remand showed under-representation and over-representation. *Pickens v. Board of Apportionment*, 220 Ark. 145, 246 S.W.2d 556 (1952).

Apportionment of State Senate by board created under this amendment, as amended by Ark. Const., Amend. 45, was constitutionally permissible although in drawing districts, counties were divided, and the apportionment created a departure of population of state legislative districts from the ideal resulting in a spread of variation from the ideal among multi-member districts of 5.9% and a spread of 9.5% between the largest and the smallest single member districts. *Kelly v. Bumpers*, 340 F. Supp. 568 (E.D. Ark. 1972), aff'd, 413 U.S. 901, 93 S. Ct. 3047, 37 L. Ed. 2d 1019 (1973).

The Board of Apportionment may cross county lines in the formation of districts whenever it is necessary to comply with the Fourteenth Amendment to the United States Constitution. *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981), cert. denied, 456 U.S. 906, 107 S. Ct. 1753, 72 L. Ed. 2d 163 (1982).

Challenge of Part of Plan.

A complaint which challenges the composition of one Senate district and seeks revision of the boundary line of only that district is not a proper cause of action pursuant to Ark. Const., Amend. 45, § 6; the entire plan must be challenged, otherwise adjustment of a single district causes a ripple effect which would require a readjustment of other districts. *Bizzell v. White*, 274 Ark. 511, 625 S.W.2d 528 (1981).

Number of Members.

Fact that federal court ruled a portion of this section, as amended by Ark. Const., Amend. 45, was unconstitutional did not invalidate the provision fixing the senate at 35 members. *Faubus v. Kinney*, 239 Ark. 443, 389 S.W.2d 887 (1965).

Cited: *Smith v. Board of Apportionment*, 219 Ark. 611, 243 S.W.2d 755 (1951); *Cheek v. Hall*, 221 Ark. 92, 252 S.W.2d 68 (1952).

§ 4. Duties of Board of Apportionment.

On or before February 1 immediately following each Federal census, said board shall reapportion the State for Representatives, and in each instance said board shall file its report with the Secretary of State,

setting forth (a) the basis of population adopted for representatives; (b) the number of representatives assigned to each county; whereupon, after 30 days from such filing date, the apportionment thus made shall become effective unless proceedings for revision be instituted in the Supreme Court within said period. [As amended by Const. Amends. 23 and 45.]

Publisher's Notes. Prior to Ark. Const., Amend. 45 this section read: "The Board shall make the first apportionment within ninety days from January 1, 1937; thereafter, on or before February 1 immediately following each Federal census, said Board shall apportion the State for both Representatives and Senators, and in each instance said Board shall file its report with the Secretary of State, setting forth (a) the basis of population adopted

for representatives; (b) the basis for senators; (c) the number of representatives assigned to each county; (d) the counties comprising each senatorial district and the number of senators assigned to each, whereupon, after thirty days from filing date, the apportionment thus made shall become effective unless proceedings for revision shall be instituted in the Supreme Court within said period."

CASE NOTES

ANALYSIS

Construction.
Applicability.
Judicial notice.
Method of apportionment.
Reapportionment after census.
Report.
Time limitations.
Validity of amendment.

Construction.

"Apportionment" and "reapportionment" as used in this amendment mean the dividing of the state into districts so that each district has a certain population, and dividing the representatives and senators so that each county shall have representation according to its population. *Bailey v. Abington*, 201 Ark. 1072, 148 S.W.2d 176 (1941).

Applicability.

This section was applicable only to an apportionment following a federal census and did not apply to an apportionment made at another time by order of court. *Williams v. Elrod*, 244 Ark. 671, 426 S.W.2d 797 (1968).

Judicial Notice.

Supreme Court takes judicial notice of reports of apportionment filed with Secretary of State. *Butler v. Democratic State Comm.*, 204 Ark. 14, 160 S.W.2d 494 (1942).

Method of Apportionment.

There was nothing unconstitutional about an apportionment plan which made both Houses consist in part of multi-member and multi-county districts. *Yancey v. Faubus*, 251 F. Supp. 998 (E.D. Ark. 1965), aff'd, 383 U.S. 271, 86 S. Ct. 933, 15 L. Ed. 2d 750 (1966).

Board of Apportionment could have constitutionally crossed county lines to effect a substantial equality of representation required by the apportionment decisions of the United States Supreme Court. *Kelly v. Bumpers*, 340 F. Supp. 568 (E.D. Ark. 1972), aff'd, 413 U.S. 901, 93 S. Ct. 3047, 37 L. Ed. 2d 1019 (1973).

Reapportionment after Census.

The duty of the Board of Apportionment to make apportionment of representatives and senators after the taking of each federal census is mandatory. *Butler v. Democratic State Comm.*, 204 Ark. 14, 160 S.W.2d 494 (1942).

Decision that 1940 census did not require change in apportionment made in 1937 constituted reapportionment. *Butler v. Democratic State Comm.*, 204 Ark. 14, 160 S.W.2d 494 (1942).

Reapportionment is not required to be made on or before February 1 where on that date census figures available were merely preliminary and not official ones. *Carpenter v. Board of Apportionment*, 218 Ark. 404, 236 S.W.2d 582 (1951).

This article does not require geographical change after each census, but does compel redistricting if shifting population makes it necessary. *Smith v. Board of Apportionment*, 219 Ark. 611, 243 S.W.2d 755 (1951).

Report.

The board was not relieved of its duty to file its report as directed under this section merely because litigation related to apportionment was pending in federal court. *Harvey v. Clinton*, 307 Ark. 567, 821 S.W.2d 777 (1992).

Time Limitations.

The requirement that a challenge to a plan of apportionment be made within the time period set forth in this section is jurisdictional. *Stack v. Clinton*, 309 Ark. 400, 832 S.W.2d 476 (1992).

Where petitioners' challenge to some elements in a plan of apportionment was untimely, the petition was dismissed because the Supreme Court's constitutional authority does not permit a piecemeal attack on a plan of apportionment. *Stack v. Clinton*, 309 Ark. 400, 832 S.W.2d 476 (1992).

Validity of Amendment.

Fact that federal court ruled a portion of Ark. Const., Amend. 45 unconstitutional did not invalidate provision requiring board of apportionment to make the reapportionment. *Faubus v. Kinney*, 239 Ark. 443, 389 S.W.2d 887 (1965).

Cited: *Smith v. Clinton*, 687 F. Supp. 1310 (E.D. Ark. 1988); *Harvey v. Clinton*, 308 Ark. App. 188, 827 S.W.2d 636 (1992); *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

§ 5. Mandamus to compel Board of Apportionment to act.

Original jurisdiction (to be exercised on application of any citizens and taxpayers) is hereby vested in the Supreme Court of the State (a) to compel (by mandamus or otherwise) the board to perform its duties as here directed and (b) to revise any arbitrary action of or abuse of discretion by the board in making such apportionment; provided any such application for revision shall be filed with said Court within 30 days after the filing of the report of apportionment by said board with the Secretary of State; if revised by the court, a certified copy of its judgment shall be by the clerk thereof forthwith transmitted to the Secretary of State, and thereupon be and become a substitute for the apportionment made by the board. [As amended by Const. Amends. 23 and 45.]

Publisher's Notes. Ark. Const. Amend. 45 made no change in the language of this section.

CASE NOTES

ANALYSIS

Apportionment.
Cause of action.
Jurisdiction.
Review.
Time limitations.

Apportionment.

Reapportionment is not required to be made on or before February 1 where on that date census figures available were merely preliminary and not official ones.

Carpenter v. Board of Apportionment, 218 Ark. 404, 236 S.W.2d 582 (1951).

The 30-day time limitation in this section for filing applications for revision of an apportionment plan is reasonable and necessary to give the reapportionment plan a degree of stability and finality; thus, where the petitioners filed their petition for revision two and a half years after the apportionment report was filed, the petition was rejected as untimely. *Taylor v. Clinton*, 284 Ark. 170, 680 S.W.2d 98 (1984).

Avoiding contests between incumbent representatives is a legitimate reapportionment criterion. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

Cause of Action.

A timely action filed to challenge the validity of one senate district in a reapportionment plan and not the entire plan did not state a prima facie cause of action under this section and the complaint could not be amended after the expiration of the 30-day period to state a proper cause of action. *Bizzell v. White*, 274 Ark. 511, 625 S.W.2d 528 (1981).

Jurisdiction.

The jurisdiction vested in the Supreme Court by this section was exclusive. *Rockefeller v. Smith*, 246 Ark. 819, 440 S.W.2d 580 (1969).

Review.

“Arbitrary” means that the state supreme court can redraw an apportionment plan only when the report of the Board of

Apportionment is not supportable on any lawful rational basis. *Harvey v. Clinton*, 308 Ark. 546, 826 S.W.2d 236 (1992).

Time Limitations.

The requirement that a challenge to a plan of apportionment be made within the time period set forth in this section is jurisdictional. *Stack v. Clinton*, 309 Ark. 400, 832 S.W.2d 476 (1992).

Where petitioners’ challenge to some elements in a plan of apportionment was untimely, the appeal was dismissed because the Supreme Court’s constitutional authority does not permit a piecemeal attack on a plan of apportionment. *Stack v. Clinton*, 309 Ark. 400, 832 S.W.2d 476 (1992).

Cited: *In re Wallace*, 61 Bankr. 54 (Bankr. W.D. Ark. 1986); *Smith v. Clinton*, 687 F. Supp. 1310 (E.D. Ark. 1988); *Harvey v. Clinton*, 307 Ark. 567, 821 S.W.2d 777 (1992); *Harvey v. Clinton*, 308 Ark. App. 188, 827 S.W.2d 636 (1992).

§ 6. Election of Senators and Representatives.

At the next general election for State and County officers ensuing after any such apportionment, Representatives shall be elected in accordance therewith, Senators shall be elected henceforth according to the apportionment now existing, and their respective terms of office shall begin on January 1 next following. Senators shall be elected for a term of four years at the expiration of their present terms of office. [As amended by Const. Amends. 23 and 45.]

Publisher’s Notes. Although Ark. Const. Amend. 45 amended this section to read as it appears above, the court held in *Williams v. Elrod*, 244 Ark. 671, 426 S.W.2d 797 (1968) that the lot drawing provisions of Const., Amend. 23 were not in conflict with the provisions of Const., Amend. 45 and are still valid. As amended by Const., Amend. 23, this section read: “At the next general election for State and County officers ensuing after such apportionment, senators and representatives

shall be elected in accordance therewith and their respective terms of office shall begin on January 1 next following. At the first regular session succeeding any apportionment so made, the Senate shall be divided into two classes by lot, eighteen of whom shall serve a period of two years and the remaining seventeen for four years, after which all shall be elected for four years until the next reapportionment hereunder.”

CASE NOTES

ANALYSIS

Apportionment pursuant to court order.
Commencement of term.
County board of election commissioners.

Determination by lot.
Parties to action.

Apportionment Pursuant to Court Order.

An apportionment made pursuant to

order of court prior to the apportionment required following the next federal census did not require the senators elected to draw lots for four-year and two-year terms. *Williams v. Elrod*, 244 Ark. 671, 426 S.W.2d 797 (1968).

Commencement of Term.

This section as amended repealed Ark. Const., Amend. 5 as to the beginning date of terms of members of the General Assembly. *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964).

County Board of Election Commissioners.

Although an incumbent state senator had been defeated in the primary for reelection, he was ineligible to serve as a member of the county board of election commissioners. *Jones v. Duckett*, 234 Ark. 990, 356 S.W.2d 5 (1962).

Determination by Lot.

This section does not require determi-

nation by lot except after an apportionment or reapportionment. *Bailey v. Abington*, 201 Ark. 1072, 148 S.W.2d 176 (1941) (decision prior to Const., Amend. 45).

This section, as amended by Const., Amend. 45, did not repeal by implication the lot-drawing provisions of Const., Amend. 23. *Williams v. Elrod*, 244 Ark. 671, 426 S.W.2d 797 (1968).

Parties to Action.

A suit brought by a voter seeking a declaratory judgment as to whether the senate elected under this section should be divided into two classes by lot was fatally defective when only the five senators from the voter's senatorial district were named parties defendant, it being necessary to name all senators parties defendant. *Block v. Allen*, 241 Ark. 970, 411 S.W.2d 21 (1967).

ARTICLE 9

EXEMPTION

SECTION.

1. Personal property exemptions of persons not heads of families.
2. Heads of families — Exempt personal property.
3. Homestead exemption from legal process — Exceptions.
4. Rural homestead — Acreage — Value.
5. Urban homestead — Acreage — Value.

SECTION.

6. Rights of widow and children.
7. Married woman's separate property — Right of disposition — Not liable for debts of husband.
8. Scheduling separate personal property of wife.
9. Exemptions under Constitution of 1868 — Existing obligations.
10. Homestead rights of minor children.

RESEARCH REFERENCES

ALR. Lien of judgment on excess value of homestead. 41 ALR 4th 292.

Am. Jur. 31 Am. Jur. 2d, Exemptions, § 15 et seq.

40 Am. Jur. 2d, Homestead, § 1 et seq.

Ark. L. Rev. Note, in re Holt: Personal Property Exemptions and the Forgotten Arkansas Constitution, 42 Ark. L. Rev. 759.

C.J.S. 35 C.J.S., Exemptions, § 7 et seq.

40 C.J.S., Homesteads, § 6 et seq.

UALR L.J. Hardin, Conversion of Non-exempt Property to Exempt Property on the Eve of Bankruptcy in Arkansas, 10 UALR L.J. 719.

CASE NOTES

Cited: *McCrary v. Johnson*, 296 Ark. 231, 755 S.W.2d 566 (1988).

§ 1. Personal property exemptions of persons not heads of families.

The personal property of any resident of this State, who is not married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of two hundred dollars, in addition to his or her wearing apparel, shall be exempt from seizure on attachment, or sale on execution or other process from any court, issued for the collection of any debt by contract: Provided, That no property shall be exempt from execution for debts contracted for the purchase money therefor while in the hands of the vendee.

RESEARCH REFERENCES

Ark. L. Rev. Laurence, In re Holt and the Re-making of Arkansas Exemption Law: Commentary after the Rout, 43 Ark. L. Rev. 235.

CASE NOTES

ANALYSIS

Construction.
Conflict of laws.
Debt by contract.
Duty to claim exemption.
—Defective schedule.
Garnishment.
Insurance proceeds.
Property subject to exemption.
Purchase money.
Residence.
Transfer of property.
Waiver.

Construction.

This section is to be liberally construed. *Pemberton v. Bank of E. Ark.*, 173 Ark. 949, 294 S.W. 64 (1927).

Conflict of Laws.

Exemption laws are not a part of the contract and pertain only to the remedy and the law of the forum relative thereto governs. Non-residents can neither claim benefits of exemption laws of this state nor avail themselves of the exemption laws of their home state. *Person v. Williams-Echols Dry Goods Co.*, 113 Ark. 467, 169 S.W. 223 (1914).

Debt by Contract.

Exemptions not allowed as against an execution for costs recovered independent of any other judgment. *Buckley v. Williams*, 84 Ark. 187, 105 S.W. 95 (1907).

Judgment debtor was held not entitled to exemption under this section where suit was based on collusion and negligence and was therefore in tort and not on contract. *Hill v. Bush*, 192 Ark. 181, 90 S.W.2d 490 (1936).

Duty to Claim Exemption.

Property levied upon can not be replevied until established as exempt by filing schedule and requesting a supersedeas. *Settles v. Bond*, 49 Ark. 114, 4 S.W. 286 (1886); *Driggs & Co.'s Bank v. Norwood*, 49 Ark. 136, 4 S.W. 448 (1885).

All personal property is, prima facie, subject to execution, and the burden is upon the vendee thereof or the claimant to show it is exempt. *Blythe v. Jett*, 52 Ark. 547, 13 S.W. 137 (1889); *Griffin v. Batterall Shoe Co.*, 137 Ark. 37, 207 S.W. 439 (1918).

When there is an unavoidable failure to claim exemptions, as by death, the relief can be extended by equity, and a justice of the peace is authorized to act on such

equitable principle. *Thompson v. Ogle*, 55 Ark. 101, 17 S.W. 593 (1891).

Exemptions will not be allowed unless claimed as provided by statute. *Scanlan v. Guiling*, 63 Ark. 540, 39 S.W. 713 (1897).

—Defective Schedule.

A schedule of property which does not claim it or any portion of it as exempt from execution, nor shows that the party filing it is a resident of this state, is fatally defective. *Guise v. State*, 41 Ark. 249 (1883); *Cason v. Bone*, 43 Ark. 17 (1884).

A defective schedule filed in a justice of the peace court may be amended in the circuit court on appeal. *May v. Hutson*, 54 Ark. 226, 15 S.W. 606 (1891).

Garnishment.

Funds in the hands of garnishee may be claimed as exempt by the debtor after judgment against garnishee. *Blass v. Erber*, 65 Ark. 112, 44 S.W. 1128 (1898).

A vendee who is garnished to recover the purchase price of chattels can not claim exemptions therein. *Liddell v. Jones*, 76 Ark. 344, 88 S.W. 961 (1905).

Insurance Proceeds.

A statute exempting insurance proceeds from attachment and garnishment was not for the purpose of allowing beneficiaries exemptions they were not entitled to under the Constitution. *Acree v. Whitley*, 136 Ark. 149, 206 S.W. 137 (1918).

Property Subject to Exemption.

Property can not be scheduled against a judgment in replevin. *Smith v. Ragsdale*, 36 Ark. 297 (1880).

Partners can not claim exemption in partnership property. *Richardson v. Adler, Goldman & Co.*, 46 Ark. 43 (1885); *Porch v. Arkansas Milling Co.*, 65 Ark. 40, 45 S.W. 51 (1898).

Judgment for damages being a chose in action may be claimed as exempt. *Draffin v. Smith*, 63 Ark. 83, 37 S.W. 307 (1896).

Proceeds of sale of land not homestead may be claimed exempt. *Wheeler v. Eatman*, 67 Ark. 133, 53 S.W. 571 (1899).

In foreclosure of vendor's lien, receiver may take charge of rents as they are not exempt in such cases. *Osburn v. Lindley*, 163 Ark. 260, 259 S.W. 729 (1924).

Evidence was held to warrant exemp-

tion of debtors' bank deposit from garnishment or execution on ground they constituted all the property owned by them, notwithstanding they had actually assessed other property for taxation a few months before. *W.T. Rawleigh Co. v. Castleberry*, 201 Ark. 980, 147 S.W.2d 734 (1941).

The personal property exemption in this section for persons who are not the head of a family applies to debts incurred as a result of a contract and not to a liability created by statute. *Watson v. State Dep't of Fin. & Admin.*, 283 Ark. 287, 675 S.W.2d 368 (1984).

Purchase Money.

The proviso in regard to purchase money applies also to the next section. *Friedman v. Sullivan*, 48 Ark. 213, 2 S.W. 785 (1886).

Residence.

One domiciled in this state, but temporarily absent, may claim exemptions. *Birdsong v. Tuttle*, 52 Ark. 91, 12 S.W. 158 (1889).

Transfer of Property.

A fraudulent transfer of personal property does not defeat the right to claim it as exempt. *Sannoner v. King*, 49 Ark. 299, 5 S.W. 327 (1887); *Simms v. Phillips*, 54 Ark. 193, 15 S.W. 461 (1891).

The claim to exemption may be reserved in an assignment for benefit of creditors. *Baker v. Baer*, 59 Ark. 503, 28 S.W. 28 (1894); *King v. Hargadine-McKittrick Dry-Goods Co.*, 60 Ark. 1, 28 S.W. 514 (1894).

Waiver.

Defendant does not waive exemption by buying at execution sale. *Parham v. McMurray*, 32 Ark. 261 (1877).

The defendant is not precluded from claiming his exemption by giving of a delivery bond. *Jacks & Co. v. Bingham*, 36 Ark. 481 (1880).

Failure to appeal from a justice's refusal to issue a supersedeas waived the exemption. *Cason v. Bone*, 43 Ark. 17 (1884).

Cited: In re *Lillard*, 38 Bankr. 433 (Bankr. W.D. Ark. 1984); *Walker v. Walker*, 303 Ark. 34, 791 S.W.2d 710 (1990).

§ 2. Heads of families — Exempt personal property.

The personal property of any resident of this State, who is married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of five hundred dollars, in addition to his or her wearing apparel, and that of his or her family, shall be exempt from seizure on attachment, or sale on execution or other process from any court, on debt by contract.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, On Worthen, Walker and Dicta: The Supreme Court Shoots the Breeze About Exemption Law, 1993 Ark. L. Notes 73.

Lawrence, What Holt Says and Why It's Wrong: An Essay on Sanders v. Putman, Putman v. Sanders and The Uneasy Condition of Arkansas Exemption Law, 1995 Ark. L. Notes 67.

Ark. L. Rev. Fraudulent Conveyances in Arkansas, 19 Ark. L. Rev. 149.

Lawrence, In re Holt and the Re-making of Arkansas Exemption Law: Commentary after the Rout, 43 Ark. L. Rev. 235.

Westbrook, Retirement Plan Assets in an Arkansas Bankruptcy, 43 Ark. L. Rev. 253.

UALR L.J. Survey of Arkansas Law: Business Law, 4 UALR L.J. 161.

Survey, Bankruptcy, 13 UALR L.J. 311.

CASE NOTES

ANALYSIS

Debt by contract.

—Statutory liability.

Duty to claim exemption.

Nonresidents.

Persons entitled to claim.

Property subject to exemption.

—Bankrupts' property.

—Real property.

Purchase money.

Schedule of exemption.

Debt by Contract.

Exemptions are not allowed as against a judgment recovered on a complaint charging "negligence, unskillfulness and wrongful treatment of injury." *Miller v. Mintun*, 73 Ark. 183, 83 S.W. 918 (1904).

Costs recovered independent of any other judgment is not a debt by contract. *Buckley v. Williams*, 84 Ark. 187, 105 S.W. 95 (1907).

Judgment debtor was held not entitled to exemption under this section where suit was based on collusion and negligence and was therefore in tort and not on contract. *Hill v. Bush*, 192 Ark. 181, 90 S.W.2d 490 (1936).

—Statutory Liability.

The personal property exemption in this section for persons who are the head of a

family apply to debts incurred as a result of a contract and not to a liability created by statute. *Watson v. State Dep't of Fin. & Admin.*, 283 Ark. 287, 675 S.W.2d 368 (1984).

Duty to Claim Exemption.

Claim that homestead was exempt was not precluded by bankrupts' failure to appeal from order which allowed personal property as exempt and which made no reference to bankrupts' equity in homestead which was under foreclosure. *In re Powers*, 339 F. Supp. 1068 (W.D. Ark. 1962).

Nonresidents.

A nonresident may not claim for a resident. *Saint Louis S.W. Ry. v. Vanderberg*, 91 Ark. 252, 120 S.W. 993 (1909).

A nonresident can not claim the benefit of the exemption laws of this state. *Person v. Williams-Echols Dry Goods Co.*, 113 Ark. 467, 169 S.W. 223 (1914); *Washington v. Jolliff*, 226 Ark. 190, 288 S.W.2d 600 (1956).

Persons Entitled to Claim.

Exemptions may be claimed by either husband or wife, or both. *Memphis & L.R.R.R. v. Adams*, 46 Ark. 159 (1885).

A married man is the head of a family

although his wife has deserted him and there are no other members of it. *Gates v. Steele*, 48 Ark. 539, 4 S.W. 53 (1886).

Exemptions may be claimed by minor children for absent debtor. *White v. Swann*, 68 Ark. 102, 56 S.W. 635 (1900).

Bankruptcy court found that, where the debtor filed his bankruptcy petition as a single person and testified that he was not married when he filed his bankruptcy petition, the debtor was not entitled to the personal property exemption found in this section. In *re Hunter*, 295 Bankr. 882 (Bankr. W.D. Ark. 2003).

Property Subject to Exemption.

Judgments recovered by debtors may be exempted. *Atkinson v. Pittman*, 47 Ark. 464, 2 S.W. 114 (1886).

Debtor may claim exemptions in partnership property when his interest is ascertained and aggregated. *Farmers' Union Gin & Milling Co. v. Seitz*, 93 Ark. 329, 124 S.W. 780 (1910).

Authority is vested in the legislature to prescribe the method of selecting property claimed to be exempt from execution. *Andrews v. Briggs*, 203 Ark. 714, 158 S.W.2d 269 (1942).

Because of the unmistakable incompatibility with this section of the constitution, § 16-66-209 is unconstitutional and cannot act to exempt property from inclusion in a debtor's estate pursuant to § 16-66-218(b)(17) and 11 U.S.C. § 522(b)(2)(A). In *re Hudspeth*, 92 Bankr. 827 (Bankr. W.D. Ark. 1988).

Section 16-66-209 violates this section because it exempts all insurance proceeds without limitation; the only way to cure the statute's invalidity would be to add a monetary limit consistent with the state constitution or to amend the constitution itself to revise the \$500.00 ceiling. It is not the court's function to rewrite statutes and effect of the court's decision in the

Hudspeth case is to render any exemption provided by § 16-66-209 unavailable to debtors in bankruptcy. In *re Williams*, 93 Bankr. 181 (Bankr. E.D. Ark. 1988).

The bankruptcy exemption for insurance proceeds in §§ 16-66-209 and 16-66-218 is limited by this section. *Federal Sav. & Loan Ins. Corp. v. Holt*, 97 Bankr. 997 (W.D. Ark. 1988), *aff'd*, 894 F.2d 1005 (8th Cir. 1990).

—Bankrupts' Property.

While the title to exempt property remained in the bankrupt, the trustee had the right to possession until exemptions were set off. In *re Powers*, 339 F. Supp. 1068 (W.D. Ark. 1972).

Partnership interest was the debtor's personal property and could only be exempted under the \$500.00 personal property exemption provided in this section. In *re Giller*, 127 Bankr. 215 (Bankr. W.D. Ark. 1990).

—Real Property.

Section applies to personal property and would not be applicable where property involved is real estate and testimony shows that was not of homestead character. *Jennings v. Tankersley Bros. Packing Co.*, 218 Ark. 776, 238 S.W.2d 625 (1951).

Purchase Money.

The provision in regard to purchase money in the preceding section applies also to this section. *Friedman v. Sullivan*, 48 Ark. 213, 2 S.W. 785 (1886).

Schedule of Exemption.

Defendant debtor is entitled to amend his schedule of exemption to show actual assets held by him. *Williams v. Swann*, 220 Ark. 906, 251 S.W.2d 111 (1952).

Cited: *Duraclean Co. v. Foltz*, 240 Ark. 38, 397 S.W.2d 804 (1966); *Federal Sav. & Loan Ins. Co. v. Holt*, 894 F.2d 1005 (8th Cir. 1990); *Walker v. Walker*, 303 Ark. 34, 791 S.W.2d 710 (1990).

§ 3. Homestead exemption from legal process — Exceptions.

The homestead of any resident of this State, who is married or the head of a family, shall not be subject to the lien of any judgment or decree of any court, or to sale under execution, or other process thereon, except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them, and other trustees of an express trust, for moneys due from them in their fiduciary capacity.

Cross References. Homestead Exemption Act, § 16-66-210.

RESEARCH REFERENCES

Ark. L. Notes. Lawrence, Does Arkansas's Homestead Exemption Survive a Divorce: Should It?, 1988 Ark. L. Notes 15.

Ark. L. Rev. Creditors' Provisional Remedies and Debtors' Due Process Rights: Statutory Liens in Arkansas, 32 Ark. L. Rev. 185.

Note: Middleton v. Lockhart: Rule 41(b), a Fraudulent Transfer, a Homestead, and a Homicide — Did This Hard Case Make Bad Law?, 56 Ark. L. Rev. 113.

UALR L.J. Owen, Survey of Arkansas Law: Property, 2 UALR L.J. 275.

CASE NOTES

ANALYSIS

In general.
Construction.
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— Lease for life.
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— Improvements.
Selection of homestead.
Special assessments.
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In General.

A plea that the applicant is in possession of land that is his homestead is suf-

ficient to show that the land can not be taken in execution and is good defense to a possessory action. Hughes v. Watt, 26 Ark. 228 (1870) (decision under prior Constitution).

The homestead exemption does not run in favor of a dead person and is neither an estate nor a vested interest. Sulcer v. Northwestern Nat'l Ins. Co., 263 Ark. 583, 566 S.W.2d 397 (1978).

Construction.

This section is to be liberally construed in favor of the person asserting the exemption. In re Collins, 152 Bankr. 570 (Bankr. W.D. Ark. 1992).

Abandonment.

The occupant of the land is protected in the use and occupancy of land set apart as a homestead during the time of such occupancy, but if abandoned by removal or death, leaving neither wife nor child to succeed to his rights, the rights of the judgment creditor would be fully restored. Norris v. Kidd, 28 Ark. 485 (1873); Chambers v. Sallie, 29 Ark. 407 (1874); Jackson v. Allen, 30 Ark. 110 (1875); Moore v. Granger, 30 Ark. 574 (1875) (preceding decisions under prior Constitution).

A conveyance of land in default of creditors, subsequently set aside at the suit of creditors, does not constitute an abandonment of the homestead such as opens it to creditors. Turner v. Vaughan, 33 Ark. 454 (1878); Bennett v. Hutson, 33 Ark. 762 (1878).

The owner of land who while not occupying it procured a loan thereon by making a written statement that the land was not his homestead will be deemed to have abandoned the land as a homestead. Farmers' Bldg. & Loan Ass'n v. Jones, 68 Ark. 76, 56 S.W. 1062 (1900).

By selling her deceased husband's lands, the widow abandoned the homestead. *McAndrew v. Hollingsworth*, 72 Ark. 446, 81 S.W. 610 (1904); *Burel v. Baker*, 89 Ark. 168, 116 S.W. 181 (1909); *Felton v. Brown*, 102 Ark. 658, 145 S.W. 552 (1912).

An attempt to sell may constitute an abandonment. *Griffin v. Dunn*, 79 Ark. 408, 96 S.W. 190 (1906).

The crucial aspect of whether the homestead has been abandoned is whether the owner intended to return to the homestead. In *re Inmon*, 137 Bankr. 757 (Bankr. E.D. Ark. 1992).

A temporary removal, even for a period of several years, does not constitute an abandonment of a homestead. In *re Inmon*, 137 Bankr. 757 (Bankr. E.D. Ark. 1992).

Once the right of homestead is acquired and the property remains occupied by the owner, the homestead is not lost by the death of a spouse or departure of dependent children from the home. In *re Inmon*, 137 Bankr. 757 (Bankr. E.D. Ark. 1992); In *re Smith*, 137 Bankr. 759 (Bankr. E.D. Ark. 1992).

Once the right of homestead is acquired and the property remains occupied by the owner, the homestead is not lost by the divorce. In *re Smith*, 137 Bankr. 759 (Bankr. E.D. Ark. 1992).

Once the right of homestead is acquired and the property remains occupied by the owner, the homestead is not lost by the death of a spouse, departure of dependent children from the home, or divorce of the parties; however, the presumption in favor of homestead can be overcome upon a clear showing of abandonment. In *re Gerrald*, 151 Bankr. 217 (Bankr. W.D. Ark. 1993).

The removal from the residence by virtue of a divorce does not automatically deprive debtor of his homestead rights. In *re Gerrald*, 151 Bankr. 217 (Bankr. W.D. Ark. 1993).

A temporary removal, even for a period of several years, does not constitute an abandonment. In *re Gerrald*, 151 Bankr. 217 (Bankr. W.D. Ark. 1993).

Where the debtor's express intent was to sell the home and obtain the proceeds, not to reoccupy the dwelling, he abandoned the homestead, and the claim of exemption cannot stand. In *re Gerrald*, 151 Bankr. 217 (Bankr. W.D. Ark. 1993).

The district court and the bankruptcy court properly relied on debtor's voluntary agreement to sell the home, rather than his involuntary eviction, to find that debtor abandoned his homestead interest. *Gerrald v. Wright*, 57 F.3d 652 (8th Cir. 1995).

Evidence offered by objecting creditors did not establish that on date petition was filed debtor formed intention to abandon his homestead even though debtor chose to leave homestead and stay at his office after his ex-wife discovered that he was dating another woman; debtor's residing at office could only be viewed as temporary. In *re Jones*, 193 Bankr. 503 (Bankr. E.D. Ark. 1995).

Whether or not debtor decided to abandon his homestead after petition date was not at issue; critical date was petition date. In *re Jones*, 193 Bankr. 503 (Bankr. E.D. Ark. 1995).

—Lease for Life.

Under ordinary circumstances, the execution of a lease for life would be conclusive evidence of an abandonment, but if a homestead was reserved in the lease, the exemption might be claimed in a suit on the instrument; in a suit between persons not parties to the instrument, parol evidence might be given to show intention to reserve a homestead. *Gates v. Steele*, 48 Ark. 539, 4 S.W. 53 (1886).

Bankruptcy.

Claim that homestead was exempt was not precluded by bankrupts' failure to appeal from order which allowed personal property as exempt and which made no reference to bankrupts' equity in homestead which was under foreclosure. In *re Powers*, 339 F. Supp. 1068 (W.D. Ark. 1972).

Where development company did not record mortgage on real property which debtors in bankruptcy had declared as exempt as their homestead and to which the company was an unsecured creditor in the bankruptcy proceeding, resulting in discharge of the personal liability of the debtors on the underlying debt, such discharge did not bar enforcement by the state courts, through foreclosure action, of the lien created by the unrecorded mortgage, since the lien was valid between the parties. *Cloverleaf Dev., Inc. v. Provence*, 273 Ark. 12, 616 S.W.2d 16 (1981).

Even though a homestead is not subject to any lien under this section, a judicial lien would constitute an avoidable impairment of the homestead exemption within the meaning of the Bankruptcy Code because the lien impairs the debtors' fresh start. *In re Kellar*, 204 Bankr. 22 (Bankr. E.D. Ark. 1996).

Contracts Executed under Prior Constitution.

A judgment on a note given for a debt contracted prior to adoption of present Constitution is governed, so far as exemption laws are concerned, by Constitution of 1868. *Cohn v. Hoffman*, 45 Ark. 376 (1885).

Conveyance.

A debtor can make a voluntary conveyance of a homestead, convey it with bad motives in regard to creditors, or make any disposition of it, and they have no standing to attack it as fraudulent. As to the homestead there are no creditors. *Stanley v. Snyder*, 43 Ark. 429 (1884); *Bogan v. Cleveland*, 52 Ark. 101, 12 S.W. 159 (1889).

A judgment debtor who conveyed all his land to his children except 40 acres retained for himself was entitled to a homestead exemption to the extent of 160 acres. *Carmack v. Lovett*, 44 Ark. 180 (1884).

The conveyance of a homestead, which is invalid for non-joinder of the wife, is not cured by subsequent abandonment, and the land becomes liable to attachment which relates back to the date of the writ. *Pipkin v. Williams*, 57 Ark. 242, 21 S.W. 433 (1893).

Where prior to judgment in action against mother and son, the mother conveyed 160-acre tract of land which she occupied as homestead to the son who immediately entered into possession and impressed it as a homestead, allowance of his claim of homestead was held proper as there could be no question of fraudulent conveyance of the mother's homestead. *Bank of Dover v. Jones*, 192 Ark. 740, 95 S.W.2d 92 (1936).

A homestead claimant may sell his homestead free from any judgment rendered against him or execution issued thereon, except for claims which may be enforced against a homestead under the constitution, and the plea of homestead is available to the grantee. *Triple D-R Dev. v.*

FJN Contractors, Inc., 65 Ark. App. 192, 986 S.W.2d 429 (1999).

—Exchange.

When a debtor exchanges his homestead for other real estate, he has no homestead right in the latter except such as may be impressed by occupancy before a lien attaches. *Campbell v. Jones*, 52 Ark. 493, 12 S.W. 1016 (1889); *Godfrey v. Herring*, 74 Ark. 186, 85 S.W. 232 (1905).

Creditors' Rights.

Arkansas law permits acquisition of a homestead, regardless of the rights of creditors. *Stanley v. Snyder*, 43 Ark. 429 (1884); *Bank of Sun Prairie v. Hovig*, 218 F. Supp. 769 (W.D. Ark. 1963).

A judgment creditor might levy on lands held as a homestead under the Constitution of 1868, but sale would be suspended; however, the execution lien would be unaffected and would be enforceable after the debtor's death against one who claims by purchase under a mortgage executed by the debtor subsequent to the levy of the execution. *Brandon v. Moore*, 50 Ark. 247, 7 S.W. 36 (1887) (decision under prior Constitution).

The devise of a homestead to the widow in contravention of the rights of creditors is void. *McAndrew v. Hollingsworth*, 72 Ark. 446, 81 S.W. 610 (1904).

The claims of creditors may be declared a lien against the homestead of a deceased, but it can not be sold until the homestead right of the widow and heirs expires. *Scoggin v. Hudgins*, 78 Ark. 531, 94 S.W. 684 (1906).

A homestead purchased with proceeds from sale of merchandise purchased on credit may be claimed exempt as against creditors for the merchandise in the absence of fraudulent intent. *Littleton v. Carruthers-Jones Shoe Co.*, 109 Ark. 493, 160 S.W. 397 (1913).

Where the wife of a debtor conveyed property in which she had homestead to a third party for the purpose of establishing a tenancy by the entirety, she conveyed any rights of homestead and the homestead became one acquired during marriage and the property was exempt from creditor of husband seeking to collect on a judgment even though the husband did not claim the homestead exemption. *Campbell v. Geheb*, 258 Ark. 225, 523 S.W.2d 185 (1975).

—Marital Property.

Where a divorce decree provided that there would be a lien on the subject homestead specifically to protect the opponent spouse's one-half marital interest in that property, the exception to the exemption was narrow and applied only to the opponent spouse with respect to the monies due for her one-half interest in the property, but stands as to other creditors and other debts that may be owed to that spouse by the debtor. *In re Smith*, 137 Bankr. 759 (Bankr. E.D. Ark. 1992).

—Support Payments.

A wife was not entitled to have included in a divorce decree a declaration that her money judgment for delinquent support payments was a lien upon her husband's share of the proceeds to be derived from the sale of the homestead. *Williams v. Williams*, 245 Ark. 475, 432 S.W.2d 830 (1968).

Federal Agency.

The fact that a property was homestead did not automatically bar the mortgagor FmHA from foreclosing upon the property. *United States v. Warren Brown & Sons Farms*, 868 F. Supp. 1129 (E.D. Ark. 1994).

Fiduciary Relationship.

Where the homestead was not in the lifetime of the debtor exempt from debts created by him in a fiduciary capacity his death will not exonerate it in favor of the widow or minor children. *Gilbert v. Neely*, 35 Ark. 24 (1879) (decision under prior Constitution).

The homestead of an attorney, who received money to indemnify himself against liability as a surety for his client and converted it to his own use, can not be subject to lien of judgment since the money was not held as a trustee but as surety to protect himself. *Sanders v. Sanders*, 56 Ark. 585, 20 S.W. 517 (1892).

Money borrowed from a bank by its cashier by means of an overdraft, used in the building of a house, can not be followed into the building as an express trust so as to subject the building to execution. *McIlroy Banking Co. v. Dickson*, 66 Ark. 327, 50 S.W. 868 (1899).

A guardian can not claim his homestead exempt from judgment against him in favor of his wards. *Reaves v. Coffman*, 87 Ark. 60, 112 S.W. 194 (1908).

A railway station agent is not a trustee of an express trust, although he gave bond for the faithful performance of his duties. *United States Fid. & Guar. Co. v. Smith*, 103 Ark. 145, 147 S.W. 54 (1912).

Tax collector is not a trustee of an express trust. *Arnold v. Stephens*, 173 Ark. 205, 296 S.W. 24 (1927).

Head of a Family.

The Arkansas Supreme Court has recognized certain factors that are critical in the determination as to whether a debtor qualifies as "head of a family." These factors are: (1) the existence of an obligation upon the head of the house to support the others; (2) the existence of a corresponding state of dependence upon those being supported; and (3) the head of the family is one in authority where the status or relationship of the family exists. *In re Pate*, 95 Bankr. 102 (Bankr. W.D. Ark. 1988); *In re Collins*, 152 Bankr. 570 (Bankr. W.D. Ark. 1992).

There is no dispute that the debtor possessed a homestead within the meaning of this section when, at the time he resided in the property, he was the head of a household, an Arkansas resident, and made the dwelling "home." *In re Gerrald*, 151 Bankr. 217 (Bankr. W.D. Ark. 1993).

—Family.

The concept of "family" in the exemption imposes the requirement of a substantial relationship between the person who is obligated to provide the support and the person who as a dependent relies upon the support. *In re Pate*, 95 Bankr. 102 (Bankr. W.D. Ark. 1988).

In order to constitute a family, something more is required than a mere aggregation of individuals residing in the same house. *In re Pate*, 95 Bankr. 102 (Bankr. W.D. Ark. 1988).

To constitute a family, within the meaning of the homestead laws, there must be an obligation upon the head of the house to support other individuals and, on their part, a corresponding state of dependence. *Coker v. Bank of Cabot*, 127 Bankr. 23 (Bankr. E.D. Ark. 1991).

The unmarried debtor satisfied all the elements necessary to establish his being the head of family during the time his child, his child's mother, and her child by a previous marriage were living with him in his home; the debtor's right to claim his

exemption continues, notwithstanding the fact that his family has departed. In re Collins, 152 Bankr. 570 (Bankr. W.D. Ark. 1992).

Insurance Proceeds.

Insurance money of homestead destroyed by fire was not exempt from process for money loaned to buy it. *Acruman v. Barnes*, 66 Ark. 442, 51 S.W. 319 (1899).

Insurance proceeds from a homestead are exempt from execution for a reasonable period of time to allow a person to invest in another homestead. *Exchange Bank & Trust Co. v. Mathews*, 267 Ark. 415, 591 S.W.2d 354 (1979).

Limitations.

Limitations began to run against heir when the homestead was abandoned by widow rather than from the death of widow. *Killeam v. Carter*, 65 Ark. 68, 44 S.W. 1032 (1898).

Manner of Holding.

A tenant in common is entitled to a homestead. *Greenwood & Son v. Maddox & Toms*, 27 Ark. 648 (1872); *Sentell v. Armor*, 35 Ark. 49 (1879) (preceding decisions under prior Constitution); *Ward v. Mayfield*, 41 Ark. 94 (1883); *Simpson v. Biffle*, 63 Ark. 289, 38 S.W. 345 (1896).

A homestead held by equitable title is exempt from execution the same as if held by legal title. *Rockafellow v. Peay*, 40 Ark. 69 (1882) (decision under prior Constitution).

A leasehold estate is sufficient to support a homestead. *Robson v. Hough*, 56 Ark. 621, 20 S.W. 523 (1892).

Homestead may be acquired in lands held by entirety. *Simpson v. Biffle*, 63 Ark. 289, 38 S.W. 345 (1896); *Gannon v. Moore*, 83 Ark. 196, 104 S.W. 139 (1907).

The homestead may be based on estate of curtesy. *White Sewing-Machine Co. v. Wooster*, 66 Ark. 382, 50 S.W. 1000 (1899).

A remainderman can not claim homestead during the life and occupancy of the life tenant. *Brooks v. Goodwin*, 123 Ark. 607, 186 S.W. 67 (1916); *Jones v. Thompson*, 204 Ark. 1085, 166 S.W.2d 1036 (1942).

Once the right of homestead is acquired and the property remains occupied by the owner, the homestead is not lost by the death of a spouse and/or arrival at age and removal from the premises of children.

Smith v. Webb, 121 Bankr. 827 (Bankr. E.D. Ark. 1990).

Where the debtor, when he acquired the property, was unmarried and had no dependents, the property did not qualify as homestead property. In re *Richard*, 165 Bankr. 641 (Bankr. W.D. Ark. 1994).

A judgment creditor could satisfy his judgment against individuals and a family trust by sale of real property, notwithstanding the contention that the property was a homestead, where (1) the property was owned by the trust, (2) the individuals were the settlors of the trust and among the trustees of the trust, but were not the beneficiaries of the trust, and (3) the individuals occupied the property under a contract with the trust which "require[d]" them to "live on the premises" subject to having to vacate on fifteen days' notice. *Richardson v. Klaesson*, 210 F.3d 811 (8th Cir. 2000).

Occupancy.

A house upon the land is necessary to place it within protection as a homestead. *Williams v. Dorris*, 31 Ark. 466 (1876) (decision under prior Constitution).

The right to hold as a homestead exempt from seizure under an order of attachment depended upon occupancy as a residence on the day it was attached, and occupancy after the levy did not relieve it of the attachment lien, or from sale. *Reynolds v. Tenant*, 51 Ark. 84, 9 S.W. 857 (1888).

One who has a domicile in this state, though temporarily residing elsewhere, is entitled to exemptions. *Birdsong v. Tuttle*, 52 Ark. 91, 12 S.W. 158 (1889).

Neither intention to occupy nor occasional occupancy will be sufficient to impress lands with the character of homestead if an actual home is maintained elsewhere. *Tiller v. Bass*, 57 Ark. 179, 21 S.W. 34 (1893).

One does not lose his homestead for using part of it for business purposes. *Simpson v. Biffle*, 63 Ark. 289, 38 S.W. 345 (1896); *King v. Sweatt*, 115 F. Supp. 215 (W.D. Ark. 1953); *Smith v. Webb*, 121 Bankr. 827 (Bankr. E.D. Ark. 1990).

Storehouse on lot with dwelling may be claimed as homestead also. *Berry v. Meir*, 70 Ark. 129, 66 S.W. 439 (1902).

An enforced temporary absence on account of destruction of the dwelling house will not operate as an abandonment or

raise a presumption of abandonment. *Gazole v. Savage*, 80 Ark. 249, 96 S.W. 981 (1906).

Actual occupancy in good faith is essential to impressment of homestead character, and mere intention to occupy as a homestead in the future is not sufficient. *Bank of Sun Prairie v. Hovig*, 218 F. Supp. 769 (W.D. Ark. 1963).

An owner of 40 acres, which were levied on in execution of a judgment, was not entitled to a homestead exemption, since the owner was divorced and since the owner's grown son, who occasionally lived in a trailer on the 40 acres, was a full-time college student with an athletic scholarship. *Adams v. Planters Prod. Credit Ass'n*, 262 Ark. 734, 561 S.W.2d 80 (1978).

A person who occupies a premises with the permission of the owner has a sufficient interest in the realty to support a claim for a homestead exemption under Arkansas law. *Richardson v. Klaesson*, 210 F.3d 811 (8th Cir. 2000).

—Intent.

When once acquired a homestead will not be considered abandoned on account of the owner removing from it temporarily, no matter for how long, when there is a bona fide intention to return to it, and the absence is intended to be temporary. *Euper v. Alkire & Co.*, 37 Ark. 283 (1881); *Robinson v. Swearingen*, 55 Ark. 55, 178 S.W. 365 (1891); *Wolf v. Hawkins*, 60 Ark. 262, 29 S.W. 892 (1895); *Wilks v. Vaughan*, 73 Ark. 174, 83 S.W. 913 (1904); *Stewart v. Pritchard*, 101 Ark. 101, 141 S.W. 505 (1911); *Harris v. Ray*, 107 Ark. 281, 154 S.W. 499 (1913); *Ross v. White*, 15 Ark. App. 98, 689 S.W.2d 588 (1985).

The moving of furniture with intention to occupy was sufficient although the owner died before actually residing on the homestead. *Gill v. Gill*, 69 Ark. 596, 65 S.W. 112 (1901).

Where a husband deserts his wife, leaving her in possession of the homestead, it will be presumed that he intends to return and not abandon the homestead. *Hall v. Raulston*, 70 Ark. 343, 68 S.W. 24 (1902); *Newton v. Russian*, 74 Ark. 88, 85 S.W. 407 (1905); *Montgomery v. Dane*, 81 Ark. 154, 98 S.W. 715 (1906).

A temporary removal from a homestead for business purposes did not constitute an abandonment when the intention of returning to his home is shown. *Monroe v.*

Monroe, 250 Ark. 434, 465 S.W.2d 347 (1971).

The question of whether the debtor intends to return to the home, i.e., whether the homestead exemption is preserved, is fact-intensive. In *re Gerrald*, 151 Bankr. 217 (Bankr. W.D. Ark. 1993).

Partition.

A homestead exemption cannot be claimed in a partition suit against a cotenant. *Best v. Williams*, 260 Ark. 30, 537 S.W.2d 793 (1976).

Person Entitled to Claim.

The word "citizen" as used in the former homestead execution laws was used to mean an inhabitant or resident without implication of political or civil privileges. *McKenzie v. Murphy*, 24 Ark. 155 (1863) (decision under prior Constitution).

There must be an obligation upon the head of the house to support some or all of the others, and a corresponding state of dependence on part of some of the other occupants. *Harbison v. Vaughn*, 42 Ark. 539 (1884).

A married man is still the head of a family, although his wife deserts him and there are no other members. *Gates v. Steele*, 48 Ark. 539, 4 S.W. 53 (1886).

Any resident of the state who is married or the head of a family, of either sex, is entitled to a homestead. *Thompson v. King*, 54 Ark. 9, 14 S.W. 925 (1890); *Yadon v. Yadon*, 202 Ark. 634, 151 S.W.2d 969 (1941); *Monroe v. Monroe*, 250 Ark. 434, 465 S.W.2d 347 (1971).

The privilege of homestead attaches the instant the estate vests in one heir living upon the lands descending to several persons in common. *Robson v. Hough*, 56 Ark. 621, 20 S.W. 523 (1892).

The owner of land residing upon it with his mother and sister, whom he supports, is the head of a family. *Baldwin v. Thomas*, 71 Ark. 206, 72 S.W. 53 (1903).

A married woman may claim her lands as homestead when occupying it with her husband as such. *Gibson v. Barrett*, 75 Ark. 205, 87 S.W. 435 (1905).

—Minors.

The right of minors to the homestead is a derivative right, they succeed to it as their ancestor possessed it, subject to the liabilities existing against it. *Alzheimer v. Davis*, 37 Ark. 316 (1881); *State ex rel. Luck v. Atkins*, 53 Ark. 303, 13 S.W. 1097

(1890); Carr v. Harrington, 107 Ark. 535, 155 S.W. 1166 (1913).

The right of a decedent's infant children to hold his homestead until reaching majority is superior to rights of adult children and the widow. Burel v. Baker, 89 Ark. 168, 116 S.W. 181 (1909).

—Surviving Spouse.

The ownership of lands in her own right does not preclude a widow from claiming a homestead in her deceased husband's land which they had occupied for several years just prior to his death. Ward v. Mayfield, 41 Ark. 94 (1883); Wilmoth v. Gossett, 71 Ark. 594, 76 S.W. 1073 (1903).

A homestead estate, when once acquired and still occupied by the owner, is not lost by the death of the wife and arrival at age and removal from the premises of the children. Stanley v. Snyder, 43 Ark. 429 (1884).

A widow did not destroy her homestead right in her husband's estate by the acquisition of another home in her own right, for her own conveniences and purposes, and that of her minor children. Brown v. Brown, 104 Ark. 313, 149 S.W. 330 (1912); Monroe v. Monroe, 250 Ark. 434, 465 S.W.2d 347 (1971).

Where a person murders his or her spouse, any homestead rights that person enjoys personally by reason of the marriage to the murdered spouse are extinguished by the murder; however, the murder does not affect any homestead rights arising from the murderer's status as head of household where such rights are necessary to provide the homestead protections to children or other dependents of the murderer. Middleton v. Lockhart, 344 Ark. 572, 43 S.W.3d 113 (2001).

—Trusts.

A trust cannot claim a homestead exemption in its interest in the property for the simple reason that it is cannot be "married or the head of a family," as the Arkansas Constitution requires. Richardson v. Klaesson, 210 F.3d 811 (8th Cir. 2000).

Personal Property.

The exception in favor of the laborer relates to labor upon the homestead and has no application to personal property. Parham v. McMurray, 32 Ark. 261 (1877) (decision under prior Constitution).

Proof.

Where debtor failed to prove anything more than a minimal relationship, the fact that he and his father lived in the same house, debtor could not claim his interest in the property under the homestead exemption.

Purchase Money.

Although the homestead remains subject to the vendor's lien, the existence of a vendor's lien does not remove the homestead exemption. Tunstall v. Jones, 25 Ark. 272 (1868) (decision under prior Constitution).

A purchaser of land can not claim exemption against a judgment recovered on the purchase money note upon the theory that the vendor waived his lien by taking personal security. Boone County Bank v. Hensley, 62 Ark. 398, 35 S.W. 1104 (1896).

Homestead would not be exempt from judgment for money borrowed with which to pay for house. Acruman v. Barnes, 66 Ark. 442, 51 S.W. 319 (1899); Starr v. City Nat'l Bank, 159 Ark. 409, 252 S.W. 356 (1923).

A homestead is exempt from execution on a judgment for borrowed money although the money was used in paying for the homestead. Phillips v. Colvin, 114 Ark. 14, 169 S.W. 316 (1914).

The homestead is not exempt for the purchase money although the form of the original indebtedness is changed. Hughes v. Sebastian County Bank, 129 Ark. 218, 195 S.W. 364 (1917).

—Improvements.

Homestead is subject to mechanic's lien for lumber furnished for its improvement. Gullledge v. Preddy, 32 Ark. 433 (1877) (decision under prior Constitution); Anderson v. Seamans, 49 Ark. 475, 5 S.W. 799 (1887).

Husband may use his money in improving his wife's homestead at his creditors' expense. Pullen v. Simpson, 74 Ark. 592, 86 S.W. 801 (1905).

Funds wrongfully obtained and used to improve homestead may be traced into the homestead, and the wrongdoer cannot avail himself of the exemption to defeat the claim of one whose funds were used. Mack v. Marvin, 211 Ark. 715, 202 S.W.2d 590 (1947).

Selection of Homestead.

Where the debtor segregates part of the homestead from the balance, the segre-

gated part becomes subject to execution. *Kienk v. Knoble*, 37 Ark. 298 (1881) (decision under prior Constitution); *Curtis v. De Jardins*, 55 Ark. 126, 17 S.W. 709 (1891).

The land composing the homestead must be contiguous. *McCrosky v. Walker*, 55 Ark. 303, 18 S.W. 169 (1892).

There is no requirement that a debtor make a written or other selection of his homestead in order to avail himself of the privilege. *Davis v. Day*, 56 Ark. 156, 19 S.W. 502 (1892).

Arbitrary selection of homestead in unreasonable and capricious shape not allowed. *Sparks v. Day*, 61 Ark. 570, 33 S.W. 1073 (1896).

Tracts of land that corner with each other are contiguous. *Clements v. Crawford County Bank*, 64 Ark. 7, 40 S.W. 132 (1897).

The fact that a widow was occupying a residence upon her separate property will not preclude her from claiming her husband's homestead at his death. *Brown v. Brown*, 104 Ark. 313, 149 S.W. 330 (1912).

Special Assessments.

A homestead is not exempt from the lien for assessments for local improvements. *Ahern v. Board of Imp. Dist. No. 3*, 69 Ark. 68, 61 S.W. 575 (1901).

Special assessments for local improvements are taxes within this section. *Shibley v. Fort Smith & Van Buren Dist.*, 96 Ark. 410, 132 S.W. 444 (1910).

Where land was part of a planned community development which provided for annual and special assessments against property owners, and by the terms of the bill of assurance under which the land was purchased such assessments were a charge upon the land and a continuing lien, the fact that the land constituted a homestead did not prevent the enforcement of the lien. *Kell v. Bella Vista Village Property Owners' Ass'n*, 258 Ark. 757, 528 S.W.2d 651 (1975).

Taxes.

State homestead exemption laws do not preclude the United States from levying upon and selling the interest of the taxpayer in the property but the buyer at the sale takes subject to any rights that may exist under state laws on homestead. *Herndon v. United States*, 501 F.2d 1219 (8th Cir. 1974).

Time for Claiming.

Homestead exemption may be claimed at any time before debtor is dispossessed. *Robinson v. Swearingen*, 55 Ark. 55, 178 S.W. 365 (1891); *Bunch v. Keith*, 64 Ark. 654, 44 S.W. 452 (1898); *Spurlock v. Gaikens*, 146 Ark. 50, 225 S.W. 17 (1920).

Unemployment Contributions.

The Employment Security Act contributions do not constitute a property tax nor one that is assessed directly against the homestead property such as the specific liens mentioned in the constitutional provision immediately preceding the word taxes. *White v. Thornbrough*, 229 Ark. 96, 313 S.W.2d 384 (1958).

Waiver.

An agreement to waive a homestead right at the time of contracting a debt is void. *Lindsay v. Merrill*, 36 Ark. 545 (1880); *Webb v. Davis*, 37 Ark. 551 (1881) (preceding decisions under prior Constitution).

A party who denied a homestead right to a particular parcel of the homestead by a declaration in a mortgage may not assert to the contrary and avoid the mortgage so long as the particular parcel is not a necessary part of the homestead. *Klenk v. Knoble*, 37 Ark. 298 (1881) (decision under prior Constitution).

The failure to claim the homestead before the land constituting it is condemned to be sold to pay the debt is no waiver. *Bunch v. Keith*, 64 Ark. 654, 44 S.W. 452 (1898).

Homestead right is a personal privilege and may be waived by debtor's failure to claim it as prescribed. *Jones v. Dillard*, 70 Ark. 69, 66 S.W. 202 (1902).

Waiver of homestead rights contained in the mortgage instrument signed by debtors is not invalid. *Rogers v. Great Am. Fed. Sav. & Loan Ass'n*, 304 Ark. 143, 801 S.W.2d 36 (1990).

A waiver of the homestead occurs where the owner has, in writing, consented to a lien against the homestead where the underlying transaction relates to that real property. *In re Smith*, 137 Bankr. 759 (Bankr. E.D. Ark. 1992).

—Minors.

A minor can not waive a homestead. *Alzheimer v. Davis*, 37 Ark. 316 (1881).

Zoning.

A homestead is a constitutional right and, thus, should not be denied or dis-

solved merely by a zoning change effected by the executive or legislative branches of state or local government. *Smith v. Webb*, 121 Bankr. 827 (Bankr. E.D. Ark. 1990).

Cited: *United States v. Forrester*, 118 F. Supp. 401 (W.D. Ark. 1954); *United States v. 339.77 Acres of Land*, 240 F. Supp. 545

(W.D. Ark. 1965); *Stevens v. Pike County Bank*, 829 F.2d 693 (8th Cir. 1987); *Mercantile First Nat'l Bank v. Lee*, 31 Ark. App. 169, 790 S.W.2d 916 (1990) (decision under prior Constitution).; *Tri-State Delta Chems., Inc. v. Wilkison*, 75 Ark. App. 140, 55 S.W.3d 304 (2001).

§ 4. Rural homestead — Acreage — Value.

The homestead outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, to be selected by the owner; Provided, The same shall not exceed in value the sum of twenty-five hundred dollars, and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

Cross References. Homestead Exemption Act, § 16-66-210.

RESEARCH REFERENCES

UALR L.J. Brantley and Effland, Inheritance, the Share of the Surviving Spouse, and Wills: Arkansas Law and the

Uniform Probate Code Compared, 3 UALR L.J. 361.

CASE NOTES

ANALYSIS

- Construction.
- Bankruptcy proceedings.
- City, town or village.
- Dwelling house.
- Nature of property.
- Occupancy.
- Proof of value.
- Sale of property.
- Secured creditors.

Construction.

Constitutional or statutory provisions for homesteads are to be construed liberally toward the debtor, but strictly toward his creditors. *Bank of Sun Prairie v. Hovig*, 218 F. Supp. 769 (W.D. Ark. 1963).

The constitutional provisions regarding homestead exemptions are liberally construed in favor of the person asserting the exemption. *Scott County Bank v. McCraw*, 58 Bankr. 175 (Bankr. W.D. Ark. 1985).

Bankruptcy Proceedings.

Where development company did not record mortgage on real property which debtors in bankruptcy had declared as exempt as their homestead and to which

the company was an unsecured creditor in the bankruptcy proceeding, resulting in discharge of the personal liability of the debtors on the underlying debt, such discharge did not bar enforcement through foreclosure action of the lien created by the unrecorded mortgage. *Cloverleaf Dev., Inc. v. Provence*, 273 Ark. 12, 616 S.W.2d 16 (1981).

Husband and wife who were joint petitioners in bankruptcy were only entitled to only one homestead exemption. *Stevens v. Pike County Bank*, 829 F.2d 693 (8th Cir. 1987).

Even though the lots were located within a subdivision, the subdivision was not within an incorporated town, city or village, the subdivision was not provided services commonly thought of as being provided in a city, town or village and, therefore, the property claimed as exempt by the debtor was rural property within the meaning of this section. In re *Weaver*, 128 Bankr. 224 (Bankr. W.D. Ark. 1991).

City, Town or Village.

There being no precise legal definition of the terms 'city, town or village,' as used

in the Constitution of Arkansas defining a homestead, the court will presume that the words were used in their popular sense. *Bank of Sun Prairie v. Hovig*, 218 F. Supp. 769 (W.D. Ark. 1963).

Dwelling House.

Homestead includes place of residence, which may be a mansion, a cabin, or a tent. *Gibbs v. Adams*, 76 Ark. 575, 89 S.W. 1008 (1905); *Flowers v. United States Fid. & Guar. Co.*, 89 Ark. 506, 117 S.W. 547 (1909).

Nature of Property.

Lands used for agricultural purposes not within limits of town may be claimed as rural homestead. *Orr v. Doughty*, 51 Ark. 527, 11 S.W. 875 (1889).

The mere fact that the property is located two and one-half miles from the corporate limits of the nearest city, town or village is not conclusive of the nature of the property as rural, not urban, homestead. *Bank of Sun Prairie v. Hovig*, 218 F. Supp. 769 (W.D. Ark. 1963).

The fact that the claimant operated a tourist court on the same premises where their residence was located would not affect the over-all nature of their property as rural, rather than urban. *Bank of Sun Prairie v. Hovig*, 218 F. Supp. 769 (W.D. Ark. 1963).

Where a 20-acre tract was located within the limits of an incorporated town, but the property was used exclusively for agricultural purposes and as defendant's home, and where the incorporated town had no schools, industry, service stations or other municipal services characteristic of a "town," the land qualified for a rural homestead exemption. *Farmers Coop. Ass'n v. Stevens*, 260 Ark. 735, 543 S.W.2d 920 (1976).

Occupancy.

Tract must actually be occupied as a homestead. *Shell v. Young*, 78 Ark. 479, 95 S.W. 798 (1906).

Evidence showing 80 acres of land divided into two 40 acre tracts by a dirt road, and that the tract upon which the house is located is not fenced, has not been cultivated, and the only use has been for wood for fuel and for sale of wood for ties, is not incompatible with a claim that the entire 80 acres is part of the homestead. *Hambleton v. Coopwood*, 239 Ark. 184, 388 S.W.2d 92 (1965).

Once the homestead exemption attaches, it is not lost if subsequently the debtor's family departs from the homestead because of death, divorce, or the arrival of children at the age of majority. *Scott County Bank v. McCraw*, 58 Bankr. 175 (Bankr. W.D. Ark. 1985).

Even though prior to the filing of the bankruptcy petition the debtor was divorced from her husband, and at the time the bankruptcy petition was filed she lived on the property alone and unmarried, the homestead exemption was available where the debtor was married at the time the property in question was purchased and she resided in a residence located on the property with her husband. *Scott County Bank v. McCraw*, 58 Bankr. 175 (Bankr. W.D. Ark. 1985).

Where the debtor elected bankruptcy exemptions under state law rather than 11 U.S.C.S. § 522, the court found that the debtor's claimed interest was abandoned by the debtor; the property was no longer impressed with homestead character sufficient to allow the debtor to claim a right to homestead exemption in the property pursuant to §§ 16-66-217 and 16-66-218. *In re Hunter*, 295 Bankr. 882 (Bankr. W.D. Ark. 2003).

Proof of Value.

The burden is on the claimant to show value. *Pace v. Robbins*, 67 Ark. 232, 54 S.W. 213 (1899); *Jones v. Dillard*, 70 Ark. 69, 66 S.W. 202 (1902).

A widow's right of homestead in one of two adjoining eighty-acre tracts could not be defeated by testimony of the value of the two tracts at the time of trial where there was no evidence of their value at the time of the decedent's death. *Edgar v. Edgar*, 248 Ark. 215, 451 S.W.2d 450 (1970).

Sale of Property.

Where the sale of the commercial property does not produce enough money to pay the amount due, the homestead property may then be sold, and if that sale produces more than enough to pay the indebtedness due, the balance would go to the homestead owners as proceeds of the sale of exempt homestead property. *Lee v. Mercantile First Nat'l Bank*, 27 Ark. App. 11, 765 S.W.2d 17 (1989).

The rule against marshaling assets when it would cause a homestead to be

sold applies when the second creditor holds a mortgage that does not include the homestead as well as when he is a common creditor. *Lee v. Mercantile First Nat'l Bank*, 27 Ark. App. 11, 765 S.W.2d 17 (1989).

Secured Creditors.

The law is so solicitous of the homestead right state secured creditor will be required to exhaust his non-exempt security first, even though this procedure entails a loss to the common creditors. *Lee v. Mer-*

cantile First Nat'l Bank, 27 Ark. App. 11, 765 S.W.2d 17 (1989).

If the obligation is secured by the homestead premises and also by other property of the debtor, the latter may require the creditor to satisfy his demand by resort to the other property before having recourse to the homestead land. *Lee v. Mercantile First Nat'l Bank*, 27 Ark. App. 11, 765 S.W.2d 17 (1989).

Cited: *United States v. 339.77 Acres of Land*, 240 F. Supp. 545 (W.D. Ark. 1965).

§ 5. Urban homestead — Acreage — Value.

The homestead in any city, town or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with the improvements thereon, to be selected by the owner; provided, the same shall not exceed in value the sum of two thousand five hundred dollars, and in no event shall such homestead be reduced to less than one-quarter of an acre of land, without regard to value.

Cross References. Homestead Exemption Act, § 16-66-210.

RESEARCH REFERENCES

UALR L.J. Brantley and Effland, *Inheritance, the Share of the Surviving Spouse, and Wills: Arkansas Law and the*

Uniform Probate Code Compared, 3 **UALR L.J.** 361.

CASE NOTES

ANALYSIS

Nature of property.
Proof of area.
Property value.
Selection of homestead.

Nature of Property.

The fact that a homestead had not been divided into lots, and is used for farm purposes only, may be considered in determining whether it is urban or rural; but, when determined that it is within a town, city, or village, then the fact that it has not been divided into lots can be of no effect. *First Nat'l Bank v. Wilson*, 62 Ark. 140, 34 S.W. 544 (1896).

The fact that farm land had been platted into lots will not limit the homestead to one acre where the dedication was not accepted and there was no incorporation. *Clements v. Crawford County Bank*, 64 Ark. 7, 40 S.W. 132 (1897).

Land jutting into a village but used for agricultural purposes constituted a rural homestead. *Spaulding v. Haley*, 101 Ark. 296, 142 S.W. 172 (1911).

Where a city lot has a dwelling on part of a lot and the remainder of the lot has an after erected business building thereon, the widow's homestead right extends to the whole lot. *Jordan v. Jordan*, 217 Ark. 30, 228 S.W.2d 636 (1950).

The mere fact that property was located approximately one mile from the corporate limits of a city was not conclusive of the nature of the property since it is not necessary that property be situated within the corporate limits of a city, town or village to be classified as urban property. *King v. Sweatt*, 115 F. Supp. 215 (W.D. Ark. 1953).

Where a 20-acre tract was located within the limits of an incorporated town but the property was used exclusively for agricultural purposes and as defendant's

home and where the incorporated town had no schools, industry, service stations or other municipal services characteristic of a "town," the land qualified for a rural homestead exemption. *Farmers Coop. Ass'n v. Stevens*, 260 Ark. 735, 543 S.W.2d 920 (1976).

Because separating the real property, which was the subject of the debtors' claim of a homestead exemption under 11 U.S.C.S. § 522(b)(2), § 16-66-217, and this section, into exempt and non-exempt parcels would be an unlawful subdivision, the bankruptcy court ordered a sale of the property and the allocation of the proceeds between the trustee and the debtors according to each party's interest. *In re Bradley*, 282 Bankr. 430 (Bankr. W.D. Ark. 2002).

Proof of Area.

Where the homestead exceeded \$2,500 in value, it was the burden of the claimant to prove that it did not exceed $\frac{1}{4}$ acre in area. *Barnhart v. Gorman*, 131 Ark. 116, 198 S.W. 880 (1917).

Property Value.

For ad valorem tax purposes, January 1 of the year in question is the date of determination of property value and right to the exemption. *City of Fayetteville v. Phillips*, 306 Ark. 87, 811 S.W.2d 308 (1991).

Selection of Homestead.

Arbitrary selection of a homestead is not allowed. *Sparks v. Day*, 61 Ark. 570, 33 S.W. 1073 (1896).

The fact that land is separated from dwelling house by a street is not conclusive against right to claim homestead therein. *Gibbs v. Adams*, 76 Ark. 575, 89 S.W. 1008 (1905).

The court may select the homestead. *Hardin v. Hancock*, 96 Ark. 579, 132 S.W. 910 (1910).

Streets and alleys are not included in minimum size of homestead. *Starr v. City Nat'l Bank*, 159 Ark. 409, 252 S.W. 356 (1923).

In a suit for specific performance of a contract of sale for urban homestead not signed by the wife, such contract was void to at least part of the lot. The owners are in any event entitled to select a tract not exceeding the constitutional minimum of a quarter of an acre as homestead. *Rowe v. Gose*, 240 Ark. 722, 401 S.W.2d 745 (1966).

Widow-administratrix could not on her own select and determine value of property claimed as homestead. *Price v. Price*, 253 Ark. 1124, 491 S.W.2d 793 (1973).

Where the homestead property was urban property and exceeded \$2,500.00 in value, the one-acre exemption claimed by the debtor exceeded the exemption allowable under this section and the debtor had to select which portion of the one-acre tract he desired to claim as exempt. *In re Giller*, 127 Bankr. 215 (Bankr. W.D. Ark. 1990).

Cited: *Price v. Price*, 258 Ark. 363, 527 S.W.2d 322 (1975); *In re Powers*, 339 F. Supp. 1068 (W.D. Ark. 1972).

§ 6. Rights of widow and children.

If the owner of a homestead die, leaving a widow, but no children, and said widow has no separate homestead in her own right, the same shall be exempt, and the rents and profits thereof shall vest in her during her natural life; Provided, That if the owner leaves children, one or more, said child or children shall share with said widow, and be entitled to half the rents and profits till each of them arrives at twenty-one years of age — each child's rights to cease at twenty-one years of age — and the shares to go to the younger children; and then all to go to the widow; and, provided, that said widow or children may reside on the homestead or not. And in case of the death of the widow, all of said homestead shall be vested in the minor children of the testator or intestate.

Publisher's Notes. In *Hess v. Wims*, 272 Ark. 43, 613 S.W.2d 85 (1981), this section, as applied, was held to violate the

equal protection clause of the U.S. Constitution in that it discriminated between widows and widowers. See also *Stokes v.*

Stokes, 271 Ark. 300, 613 S.W.2d 372 (1981). For current, gender-neutral homestead exemption act, see § 16-66-210.

RESEARCH REFERENCES

UALR L.J. Owen, Survey of Arkansas Law: Property, 2 UALR L.J. 275.

Shively, Survey of Family Law, 3 UALR L.J. 223.

Brantley and Effland, Inheritance, the Share of the Surviving Spouse, and Wills: Arkansas Law and the Uniform Probate Code Compared, 3 UALR L.J. 361.

Note, Constitutional Law — Equal Protection — Arkansas' Gender-Based Statutes on Dower, Election, Statutory Allowances, and Homestead Are Unconstitutional, 4 UALR L.J. 361.

CASE NOTES

ANALYSIS

Constitutionality.

Construction.

Abandonment.

Creditors' rights.

Manner of holding.

Nature of exemption.

Partition.

Persons entitled to claim.

— Minor children.

— Surviving spouse.

Selection.

Constitutionality.

Where, in probate proceeding, decedent's widow elected to take against the will and, as a widow with no children, was awarded the homestead interest as against the interest of her step-children, which entitled her to possession of the homestead and all of the rents and profits from the lands devised to the step-children, the constitutional provision under this section which so allows is discriminatory since the constitution makes no comparable provision for men and, if the widow had died before decedent, he could not have been allowed possession of her home, even though he had none; thus, this section of the Constitution, as applied, violates the equal protection clause of the fourteenth amendment to the United States Constitution since there is no valid governmental function to justify the dissimilar treatment of widows and widowers. *Hess v. Wims*, 272 Ark. 43, 613 S.W.2d 85 (1981).

Construction.

Laws pertaining to the homestead right of the widow and minor children shall be

construed liberally in favor of the homestead claimants. *Van Pelt v. Johnson*, 222 Ark. 398, 259 S.W.2d 519 (1953).

The phrase "the same shall be exempt" in this section refers back to the exemption in § 3 so that the exemption set forth in this section is no broader than that set forth in § 3. *Sulcer v. Northwestern Nat'l Ins. Co.*, 263 Ark. 583, 566 S.W.2d 397 (1978).

Section 28-39-201 follows the language of this section; as in the Constitution, § 28-39-201 does not mention or provide for grandchildren. *McCoy v. Walker*, 317 Ark. 86, 876 S.W.2d 252 (1994).

Abandonment.

A widow is entitled to the homestead and receive the rent, but if she sells it, there is an abandonment and it goes to the administrator for payment of debts. *Garibaldi v. Jones*, 48 Ark. 230, 2 S.W. 844 (1886).

A female child may abandon the homestead as soon as she reaches the age of eighteen. *Hargett v. Hill, Fontaine & Co.*, 101 Ark. 510, 142 S.W. 1137 (1912).

The widow may in her own right acquire a homestead after her husband's death and not abandon her husband's homestead so as to be deprived of rents and profits. *Butler v. Butler*, 176 Ark. 126, 2 S.W.2d 63 (1928).

Where divorce decree gave wife and children exclusive possession of homestead for their use and occupancy where wife remarried and moved away taking her children with her, she abandoned her right to occupy the homestead, and husband, being sole and unconditional owner, had the right to mortgage it. *Wilkerson v.*

Hoover, 192 Ark. 337, 91 S.W.2d 274 (1936).

A temporary removal from a homestead for business purposes did not constitute an abandonment when the intention of returning to his home was shown. *Monroe v. Monroe*, 250 Ark. 434, 465 S.W.2d 347 (1971).

Creditors' Rights.

The rights of creditors are suspended until the homestead rights of the widow and minor children cease. *Abramson v. Rogers*, 97 Ark. 189, 133 S.W. 836 (1911).

While this section specifically allows execution against a widow's dower interest in the homestead by her surety in her role of executrix when she misused estate funds, the use of the funds generated by the execution are limited to reimbursement of the surety. *Northwestern Nat'l Ins. Co. v. Sulcer*, 267 Ark. 31, 588 S.W.2d 442 (1979).

Manner of Holding.

Where a man is a cotenant of property when he dies, the other cotenants may seek partition after his death, even if the property is claimed by his widow as her homestead. *Allen v. Smith*, 282 Ark. 401, 669 S.W.2d 5 (1984).

Nature of Exemption.

The homestead exemption does not run in favor of a dead person and is neither an estate nor a vested interest. *Sulcer v. Northwestern Nat'l Ins. Co.*, 263 Ark. 583, 566 S.W.2d 397 (1978).

Partition.

Where husband was a cotenant at his death, only owning one-third interest in property, wife's homestead interest was in only one-third of the lot and the other cotenants had the right to seek partition of their interest. *Allen v. Smith*, 282 Ark. 401, 669 S.W.2d 5 (1984).

Persons Entitled to Claim.

Whatever homestead right existed in the husband at the time of his death descended to his widow and children. *Ward v. Mayfield*, 41 Ark. 94 (1883); *Stuckey v. Horn*, 132 Ark. 357, 200 S.W. 1025 (1918); *Allen v. Smith*, 282 Ark. 401, 669 S.W.2d 5 (1984).

A widow who received her husband's homestead by devise, for life, without declaration that it was in lieu of her homestead right, is not put to an election be-

tween the homestead and the will. *Stokes v. Pillow*, 64 Ark. 1, 40 S.W. 580 (1897); *Reeves v. Bridges*, 193 Ark. 292, 99 S.W.2d 242 (1936).

The widow and children do not obtain any greater use and enjoyment than a life tenant, and may not commit waste. *Cherokee Constr. Co. v. Harris*, 92 Ark. 260, 122 S.W. 485 (1909).

Widow and minor children share homestead equally. *Hildebrand v. Graves*, 169 Ark. 210, 275 S.W. 524 (1925).

—Minor Children.

The sale of a homestead during minority of children is void, and purchaser thereof responsible to them for rents and profits. *Nichols v. Shearon*, 49 Ark. 75, 4 S.W. 167 (1886); *Stayton v. Halpern*, 50 Ark. 329, 7 S.W. 304 (1887); *Bond v. Montgomery*, 56 Ark. 563, 20 S.W. 525 (1892); *Ex parte Tipton*, 123 Ark. 389, 185 S.W. 798 (1916).

Where the lands of an estate are sold in body for payment of debts, it is not error on certiorari to refuse to quash an order confirming the sale on the ground that part of the lands constituted the homestead and that the sale was made during the minority of children. *Burgett v. Apperson*, 52 Ark. 213, 12 S.W. 559 (1889).

Rights of infant children are superior to those of adult children and the widow. *Burel v. Baker*, 89 Ark. 168, 116 S.W. 181 (1909).

The rights of minors will not be affected by the widow's abandonment. *Smith v. Scott*, 92 Ark. 143, 122 S.W. 501 (1909).

The children of a woman by her first marriage have no rights in the homestead of her second husband, and the children of the second marriage have no rights in the homestead of their mother's first husband. *Colum v. Thornton*, 122 Ark. 287, 183 S.W. 205 (1916).

Sale of minor's homestead for payment of decedent's debts void. *Hart v. Wimberly*, 173 Ark. 1083, 296 S.W. 39 (1927).

The minor heirs have the right to share the homestead equally with the widow, and each is vested with the right to one-half of the rents and profits. *Drennan v. McCarthy*, 213 Ark. 286, 210 S.W.2d 791 (1948).

A minor's homestead cannot be sold where the parent who owned the homestead at the time of his death owed debts. *Smith v. Wofford*, 222 Ark. 315, 259 S.W.2d 507 (1953).

An unappealed decree that certain Arkansas property was not the homestead of minor children of the deceased owner was binding on minor who was represented by guardian in the proceedings in the other state. *Washington v. Jolliff*, 226 Ark. 190, 288 S.W.2d 600 (1956).

—Surviving Spouse.

A widow who has no other place of residence is entitled to the homestead of her deceased husband for life, whether she occupies it or not, and, where there are no minor children, is not accountable to anyone for rents received for it. *Gainus v. Cannon*, 42 Ark. 503 (1884).

Title to the homestead may not vest in the widow during minority of the children. *Sansom v. Harrell*, 51 Ark. 429, 11 S.W. 683 (1888).

A widow may acquire a homestead in her own right. *Grimes v. Luster*, 73 Ark. 266, 84 S.W. 223 (1904).

A widow is entitled to the homestead of her deceased husband, although she abandoned him before his death. *Brown v. Brown*, 104 Ark. 313, 149 S.W. 330 (1912).

A widow does not forfeit her homestead by remarriage. *Colum v. Thornton*, 122 Ark. 287, 183 S.W. 205 (1916).

A widow, who at the time of her husband's death was living separate from him on lands of her own, was entitled to claim a homestead in his property. *Bruce v. Bruce*, 176 Ark. 442, 3 S.W.2d 6 (1928).

When heirs have attained their majority, the widow only has the right of homestead, which may not be destroyed by statute authorizing its partition. *Henderson v. Henderson*, 212 Ark. 31, 204 S.W.2d 911 (1947).

Husband's interest in wife's ancestral lands is fixed by the law which gives the husband no additional right of homestead in his deceased wife's land. *Trice v. Miller*, 217 Ark. 229, 229 S.W.2d 233 (1950).

The Constitution does not require a widow to live on the homestead. *Van Pelt*

v. Johnson, 222 Ark. 398, 259 S.W.2d 519 (1953).

A widow does not forfeit her homestead rights by a second marriage and removal to the homestead of her second husband. *Van Pelt v. Johnson*, 222 Ark. 398, 259 S.W.2d 519 (1953).

A widow's sale of one of two adjoining eighty-acre tracts on which the family residence was located did not defeat her right of homestead in the remaining tract, which contained no residence. *Edgar v. Edgar*, 248 Ark. 215, 451 S.W.2d 450 (1970).

A widow did not destroy her homestead right in her husband's estate by the acquisition of another home in her own right for her own conveniences and purposes and that of her minor children. *Monroe v. Monroe*, 250 Ark. 434, 465 S.W.2d 347 (1971).

Selection.

The constitutional provision refers to a homestead selected by the widow in her land after her husband's death and not to a former homestead on her land which she and her husband had abandoned prior to his death. *Wilmoth v. Gossett*, 71 Ark. 594, 76 S.W. 1073 (1903).

If the parents die without making a selection, it is the duty of the court to appoint commissioners to select for minor children. *Cowley v. Thompson*, 77 Ark. 186 (1905); *Cowley v. Spradlin*, 77 Ark. 190, 91 S.W. 550 (1905).

Cited: *Maloney v. McCullough*, 215 Ark. 570, 221 S.W.2d 770 (1949); *Stratton v. Corder*, 236 Ark. 472, 366 S.W.2d 894 (1963); *United States v. 339.77 Acres of Land*, 240 F. Supp. 545 (W.D. Ark. 1965); *In re Powers*, 339 F. Supp. 1068 (W.D. Ark. 1972); *Owen v. Owen*, 267 Ark. 532, 592 S.W.2d 120 (1980); *Harbour v. Sheffield*, 269 Ark. 932, 601 S.W.2d 595 (Ct. App. 1980); *Stokes v. Stokes*, 271 Ark. 300, 613 S.W.2d 372 (1981); *Swafford v. Tyson Foods, Inc.*, 2 Ark. App. 343, 621 S.W.2d 862 (1981).

§ 7. Married woman's separate property — Right of disposition — Not liable for debts of husband.

The real and personal property of any femme covert in this State, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain her separate estate and property, and may be devised,

bequeathed or conveyed by her the same as if she were a femme sole; and the same shall not be subject to the debts of her husband.

CASE NOTES

ANALYSIS

In general.

Contracts.

—Minors.

Deeds.

—Acknowledgement.

—Minors.

Divorce.

Estate by entireties.

Title to property.

In General.

Under this provision, a married woman may convey estates acquired since its adoption without her husband joining in the conveyance and without private examination and acknowledgment of the deed. *Roberts v. Wilcox*, 36 Ark. 355 (1880); *Donahue v. Mills*, 41 Ark. 421 (1883); *Johnson v. Graham Bros. Co.*, 98 Ark. 274, 135 S.W. 853 (1911).

Property acquired by a married woman since the adoption of the Constitution of 1874 is her sole property, as though conveyed to her separate use; and advancements to her by the husband will be presumed to be gifts. *Ward v. Ward*, 36 Ark. 586 (1880).

The Constitution did not and could not divest the vested marital rights of the husband acquired in the lands of the wife before its adoption. *Tiller & Taylor v. McCoy*, 38 Ark. 91 (1881); *Shryock v. Cannon*, 39 Ark. 434 (1882).

Contracts.

A married woman may mortgage her property to secure her husband's debts. *Collins v. Wassell*, 34 Ark. 17 (1879); *Scott v. Ward*, 35 Ark. 480 (1880); *Petty v. Grisard*, 45 Ark. 117 (1885); *Sellmeyer v. Welch*, 47 Ark. 485, 1 S.W. 777 (1886); *Goldsmith v. Lewine*, 70 Ark. 516, 69 S.W. 308 (1902); *Johnson v. Graham Bros. Co.*, 98 Ark. 274, 135 S.W. 853 (1911).

A married woman's power to contract generally is not enlarged by this constitutional provision. *Walker v. Jessup*, 43 Ark. 163 (1884).

By statutory authority married women may make executory contracts to convey lands. *Sparks v. Moore*, 66 Ark. 437, 56 S.W. 1064 (1899).

—Minors.

A wife who is a minor and who has not had her disabilities of non-age removed cannot make any valid contract concerning her property nor manage nor control the same. *Pace v. Richardson*, 133 Ark. 422, 202 S.W. 852 (1918).

Deeds.

It is no objection to a married woman's conveyance that her husband does not join in it. *Milwee v. Milwee*, 44 Ark. 112 (1884).

A married woman's deed will be construed so as to give effect to it if it contains sufficient words to convey the estate. *Malin v. Ralfe*, 53 Ark. 107, 13 S.W. 595 (1890).

If a married woman joins with her husband in granting clause of deed of her land, and relinquishes her dower, the deed will convey fee. *Jones v. Hill*, 70 Ark. 34, 66 S.W. 194 (1901).

Married woman is bound by covenants in her deeds. *McGuigan v. Gaines*, 71 Ark. 614, 77 S.W. 52 (1903).

—Acknowledgement.

When a woman joins her husband in a deed of her land, and also relinquishes dower, the deed will convey the fee, although she acknowledged only the relinquishment. *Bryan v. Winburn*, 43 Ark. 28 (1884).

A married woman's deed conveying her land must be acknowledged in the manner prescribed by law in order to carry title. *Lanzer v. Butt*, 84 Ark. 335, 105 S.W. 595 (1907).

—Minors.

A married woman making a conveyance when under age may disaffirm it after coming of age by a deed inconsistent with it. *Milwee v. Milwee*, 44 Ark. 112 (1884).

When an infant married woman joins her husband in a deed to her land, she may disaffirm it any time during coverture. *Stull v. Harris*, 51 Ark. 294, 11 S.W. 104 (1888).

Divorce.

This section was meant to put a wife on an equal footing with her husband in the

acquisition and transfer of property, but it does not purport to clothe the wife with superior property rights in the event of a divorce; accordingly, the trial court did not err when it ordered an equal division of all the marital property despite the wife's contention that it was inequitable because her earnings had formed the greater part of the purchase price. *Stuart v. Stuart*, 280 Ark. 546, 660 S.W.2d 162 (1983).

Estate by Entireties.

The interest of a wife in an estate by entireties is part of her separate property. *Moore v. Denson*, 167 Ark. 134, 268 S.W. 609 (1924).

Title to Property.

A married woman is not estopped by a conveyance in which she joins her husband from subsequently acquiring the title. *Edrington v. Jefferson*, 53 Ark. 545, 14 S.W. 99 (1890).

Mere silence or inaction will not work an estoppel to claim real estate. *Anders v.*

Roark, 108 Ark. 248, 156 S.W. 1018 (1913).

Cited: *Buck v. Lee*, 36 Ark. 525 (1880); *Chrisman v. Partee*, 38 Ark. 31 (1881); *Felkner v. Tighe*, 39 Ark. 357 (1882); *Stowell v. Grider*, 48 Ark. 220, 2 S.W. 786 (1886); *Pillow v. Sentelle*, 49 Ark. 430, 5 S.W. 783 (1887); *Driggs & Co.'s Bank v. Norwood*, 50 Ark. 42, 6 S.W. 323 (1887); *Watters v. Wagley*, 53 Ark. 509, 14 S.W. 774 (1890); *Gibson v. Herriott*, 55 Ark. 85, 17 S.W. 589 (1891); *Texas & Pac. Ry. v. Humble*, 181 U.S. 57, 21 S. Ct. 526, 45 L. Ed. 747 (1901); *McCarthy v. People's Sav. Bank*, 108 Ark. 151, 156 S.W. 1023 (1913); *Goldsmith Bros. Smelting & Refining Co. v. Moore*, 108 Ark. 362, 157 S.W. 733 (1913); *Dutton v. Million*, 114 Ark. 330, 169 S.W. 1183 (1914); *McKie v. McKie*, 116 Ark. 68, 172 S.W. 891 (1914); *Holland v. Bond*, 125 Ark. 526, 189 S.W. 165 (1916); *Ward v. Pipkin*, 180 Ark. 855, 22 S.W.2d 1011 (1930); *Williams v. Brooks*, 269 Ark. 919, 601 S.W.2d 592 (Ct. App. 1980).

§ 8. Scheduling separate personal property of wife.

The General Assembly shall provide for the time and mode of scheduling the separate personal property of married women.

Cross References. Method of scheduling property, §§ 9-11-501, 9-11-509 — 9-11-514.

§ 9. Exemptions under Constitution of 1868 — Existing obligations.

The exemptions contained in the Constitution of 1868 shall apply to all debts contracted since the adoption thereof, and prior to the adoption of this Constitution.

Publisher's Notes. This Constitution was ratified by the people October 13, 1874, and its adoption was proclaimed October 30, 1874. See Proclamation by state board of election supervisors, following Schedule to Constitution.

A constitutional convention was held in

accordance with Acts 1977 (Ex. Sess.), No. 3, as amended by Acts 1979, No. 622, and a new constitution was proposed. The proposed constitution was defeated at the general election held November 4, 1980. Returns: For 276,257; Against 464,210.

CASE NOTES

Homestead Exemption Act.

As to contracts made before the adoption of the Constitution of 1868, the Homestead Exemption Act of 1852 was

revived by the first section of the schedule to this Constitution. *Lindsay v. Merrill*, 36 Ark. 545 (1880).

§ 10. Homestead rights of minor children.

The homestead provided for in this article shall inure to the benefit of the minor children, under the exemptions herein provided, after the decease of the parents.

Cross References. Homestead Ex-emption Act, § 16-66-210. Rights of spouse or child, § 28-39-201.

RESEARCH REFERENCES

UALR L.J. Brantley and Effland, Inheritance, the Share of the Surviving Spouse, and Wills: Arkansas Law and the Uniform Probate Code Compared, 3 UALR L.J. 361.

CASE NOTES

ANALYSIS

Abandonment.
Sale.
Selection.

Abandonment.

Abandonment by the widow and mother of the interest she acquired in the homestead in no manner affected the rights of minor children. *Smith v. Scott*, 92 Ark. 143, 122 S.W. 501 (1909).

The homestead right does not cease until minor children reach 21 years of age; however, a female child may abandon it upon reaching 18 years of age so long as other minor children would not be de-

prived of their rights. *Hargett v. Hill, Fontaine & Co.*, 101 Ark. 510, 142 S.W. 1137 (1911).

Sale.

The sale of a minor's homestead by order of a probate court is void. *Hart v. Wimberly*, 173 Ark. 1083, 296 S.W. 39 (1927); *Bank of Mulberry v. Frazier*, 178 Ark. 28, 9 S.W.2d 793 (1928).

Selection.

If the parents die without making the selection, the right to do so inures to the benefit of their minor children. *Cowly v. Spradlin*, 77 Ark. 190, 91 S.W. 550 (1905).

ARTICLE 10

AGRICULTURE, MINING AND MANUFACTURE

SECTION.

1. Mining, manufacturing and agricultural bureau — State aid.
2. State geologist — Creation of office — Appointment and removal.

SECTION.

3. Exemption of mines and manufactures from taxation.

§ 1. Mining, manufacturing and agricultural bureau — State aid.

The General Assembly shall pass such laws as will foster and aid the agricultural, mining and manufacturing interests of the State, and may create a bureau, to be known as the Mining, Manufacturing and Agricultural Bureau.

Publisher's Notes. A "bureau of mines, manufactures and agriculture" was created by Act March 7, 1889, No. 30 and abolished by Acts 1933, No. 153.

§ 2. State geologist — Creation of office — Appointment and removal.

The General Assembly, when deemed expedient, may create the office of State Geologist, to be appointed by the Governor, by and with the advice and consent of the Senate, who shall hold his office for such time, and perform such duties, and receive such compensation as may be prescribed by law; Provided: That he shall be at all times subject to removal by the Governor, for incompetency or gross neglect of duty.

Cross References. Industrial and State Geologist, § 15-55-204.
business development, § 15-4-101 et seq.

§ 3. Exemption of mines and manufactures from taxation.

The General Assembly may, by general law, exempt from taxation for the term of seven years from the ratification of this Constitution, the capital invested in any or all kinds of mining and manufacturing business in this State, under such regulations and restrictions as may be prescribed by law.

ARTICLE 11

MILITIA

SECTION.

SECTION.

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|--------------------------------------|---|
| 1. Persons liable to military duty. | 4. Authority to call out volunteers or militia. |
| 2. Volunteer companies. | |
| 3. Privilege of members from arrest. | |

§ 1. Persons liable to military duty.

The militia shall consist of all able-bodied male persons, residents of the State, between the ages of eighteen and forty-five years; except such as may be exempted by the laws of the United States, or this State; and shall be organized, officered, armed and equipped and trained in such manner as may be provided by law.

CASE NOTES

ANALYSIS

Appropriations.
Detached officers' list.
Part of executive branch.
Transfer of officers.

Appropriations.

An appropriation to promote the efficiency of the Arkansas State Guard is an appropriation to meet the necessary expenses of government. *State ex rel. Att'y Gen. v. Moore*, 76 Ark. 197, 88 S.W. 881 (1905).

Detached Officers' List.

The Governor as Commander in Chief of the Arkansas National Guard has the discretionary authority to create a detached officers' list therefor. *Baker v. Harris*, 178 Ark. 1001, 13 S.W.2d 33 (1929).

Part of Executive Branch.

An organized militia is provided for in the Constitution and is recognized as a part of the executive branch of the state government. *Belote v. Coffman*, 117 Ark. 352, 175 S.W. 37 (1915).

Transfer of Officers.

The Governor has the discretionary authority to transfer officers from one command to another or from any command to a detached officers' list without trial, provided no attempt is made to relieve them

of their offices. *Baker v. Harris*, 178 Ark. 1001, 13 S.W.2d 33 (1929).

Cited: *Jones v. Clark*, 278 Ark. 119, 644 S.W.2d 257 (1983); *Looper v. Thrash*, 334 Ark. 212, 972 S.W.2d 250 (1998).

§ 2. Volunteer companies.

Volunteer Companies of Infantry, Cavalry or Artillery may be formed in such manner and with such restrictions as may be provided by law.

CASE NOTES

Cited: *Adams v. Hale*, 213 Ark. 589, 212 S.W.2d 330 (1948).

§ 3. Privilege of members from arrest.

The volunteer and militia forces shall in all cases (except treason, felony and breach of the peace) be privileged from arrest during their attendance at muster and the election of officers, and in going to and returning from the same.

§ 4. Authority to call out volunteers or militia.

The Governor shall, when the General Assembly is not in session, have power to call out the Volunteers or Militia, or both, to execute the laws, repel invasion, repress insurrection and preserve the public peace; in such manner as may be authorized by law.

CASE NOTES

Cited: *Belote v. Coffman*, 117 Ark. 352, 175 S.W. 37 (1915).

ARTICLE 12**MUNICIPAL AND PRIVATE CORPORATIONS****SECTION.**

1. Revocation of certain charters.
2. Special acts prohibited — Exception.
3. Cities and towns — Organization under general laws.
4. Limitation on legislative and taxing power — Local bond issues.
5. Political subdivisions not to become stockholders in or lend credit to private corporations.
6. General incorporation laws — Charters — Revocation.
7. State not to be stockholder.

SECTION.

8. Private corporations — Issuance of stocks or bonds — Conditions and restrictions.
9. Taking of property by corporation — Compensation.
10. Issue of circulating paper.
11. Foreign corporations doing business in state.
12. State not to assume liabilities of political subdivisions or private corporations — Indebtedness to state — Release.

RESEARCH REFERENCES

UALR L.J. Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

§ 1. Revocation of certain charters.

All existing charters or grants of special or exclusive privileges, under a bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

§ 2. Special acts prohibited — Exception.

The General Assembly shall pass no special act conferring corporate powers, except for charitable, educational, penal or reformatory purposes, where the corporations created are to be and remain under the patronage and control of the state.

CASE NOTES

ANALYSIS

In general.
Administrative agencies.
Charters.
Cities.
Improvement districts.
Levee districts.

In General.

The Constitution positively prohibits special acts conferring corporate powers. *City of Little Rock v. Parish*, 36 Ark. 166 (1880).

The legislature may reasonably regulate the powers of corporations, including the regulation of the power to enter into contracts, when that regulation would not be subversive of any vested rights or the object of the charter. *Arkansas State Co. v. State*, 94 Ark. 27, 125 S.W. 1001 (1910).

Administrative Agencies.

Giving corporate capacity to certain agencies in the administration of the government is not the creation of a prohibited organization. *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912).

Charters.

The general laws under which a corporation is formed constitute its charter, and the Constitution provides that general

laws can be altered or repealed. *Ozan Lumber Co. v. Biddie*, 87 Ark. 587, 113 S.W. 796 (1908).

An act may be passed which confers no corporate powers but imposes a burden within the reserve powers of the state, but the reserve power of the state to alter, revoke, or annul charters is subject to some limitations. *Ft. Smith Light & Traction Co. v. Board of Imps.*, 169 Ark. 690, 276 S.W. 1012 (1925).

Cities.

An act of the legislature to vary the area of a city is unconstitutional. *City of Little Rock v. Parish*, 36 Ark. 166 (1880).

The legislature is empowered to designate a city the agency for expenditure of a road tax fund. *Sanderson v. Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912).

Improvement Districts.

Act of city officials elected under a void statute in creating an improvement district is valid where the legislature provided that such officials should hold office until regular officials could be elected. *Cotten v. Hughes*, 125 Ark. 126, 187 S.W. 905 (1916).

An act creating a road improvement district is not invalid as having conferred corporate entity and authority on the district. *Cumnock v. Alexander*, 139 Ark. 153,

213 S.W. 767 (1919); *Bush v. Martineau*, 174 Ark. 214, 295 S.W. 9 (1927).

Levee Districts.

The conferring of corporate powers by special act upon a levee district is not

unconstitutional. *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912); *Bush v. Martineau*, 174 Ark. 214, 295 S.W. 9 (1927).

§ 3. Cities and towns — Organization under general laws.

The General Assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated towns; and restrict their power of taxation, assessment, borrowing money and contracting debts, so as to prevent the abuse of such power.

RESEARCH REFERENCES

Ark. L. Rev. Changing Boundaries of Municipal Corporations in Arkansas, 20 Ark. L. Rev. 135.

CASE NOTES

ANALYSIS

In general.
Charters.
Classification of cities.
Financial affairs.
Powers of municipalities.
Special acts.
Taxation.
Vacancy in municipal office.

In General.

The grant of power to the legislature to provide for the organization of cities and to restrict their powers does not confer any powers on the cities or give the legislature authority to confer any greater power on cities than it may confer elsewhere. *Hendricks v. Block*, 80 Ark. 333, 97 S.W. 63 (1906).

The legislature may provide that the corporate functions, pursuant to the original organization of the incorporated town, may be exercised by officers elected for the municipality as a city of another class. *Cotten v. Hughes*, 125 Ark. 126, 187 S.W. 905 (1916).

Charters.

The legislature reserves the power to alter the privileges which it grants when it issues a charter to a corporation; it can modify or amend or even revoke the charter. *Arkansas Stave Co. v. State*, 94 Ark. 27, 125 S.W. 1001 (1910).

Classification of Cities.

The constitutional power conferred on the legislature to organize and classify cities was not repealed or affected by a constitutional amendment relating to municipal improvement bonds and providing that a city of the first or second class may issue bonds in sums and for purposes approved by the majority of qualified electors. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1946).

Financial Affairs.

City ordinance creating a position of finance director to handle financial affairs of city and removing such duties from city clerk was not prohibited by this section. *Besharse v. City of Blytheville*, 254 Ark. 382, 493 S.W.2d 708 (1973).

Powers of Municipalities.

A municipality has the power to prohibit by ordinance filling stations and other service appliances within fire limits of the city. *Sander v. City of Blytheville*, 164 Ark. 434, 262 S.W. 23 (1924).

The Constitution invests municipalities with power to maintain agencies, such as fire departments, and those so employed are subject to the general laws enacted in the interest of public safety. *Nalley v. Throckmorton*, 212 Ark. 525, 206 S.W.2d 455 (1947).

The control and supervision of streets within a municipality is given to the exec-

utive and legislative branches of the municipality; no street within the city may be dedicated to the city until accepted and confirmed by a municipal ordinance specially passed for that purpose. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

Special Acts.

A special act by which the legislature attempts to raise an incorporated town to a city of the second class is void. *Cotten v. Benton*, 117 Ark. 190, 174 S.W. 231 (1915).

Where a statute is passed classifying cities according to population, the fact that there is only one city within a class does not make the statute special relating to cities in that class. *McLaughlin v. Ford*, 168 Ark. 1108, 273 S.W. 707 (1925).

A statute allowing incorporated towns, irrespective of size and population, to become cities of the second class by passing an ordinance to submit such question to the citizens, does not violate the provision against special laws. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940).

Taxation.

The legislature may provide in what manner and to what extent taxes shall be

levied to support municipal corporations, and how their debts shall be paid. *Vance v. City of Little Rock*, 30 Ark. 435 (1875).

A municipal corporation has no inherent power to levy taxes, but can levy only such taxes as are authorized by law. *Vance v. City of Little Rock*, 30 Ark. 435 (1875); *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

The legislature may authorize, beyond the limitation of taxation by cities and towns to the extent of their maintenance and well-being, assessments for local improvements within city territory. *Carson v. St. Francis Levee Dist.*, 59 Ark. 513, 27 S.W. 590 (1894).

Vacancy in Municipal Office.

The legislature, which possesses the power to organize cities, provides that the mayor's office, in the event of a vacancy, will be filled by special election, therefore, it may not be filled by appointment. *Hogins v. Bullock*, 92 Ark. 67, 121 S.W. 1064 (1909).

Cited: *Holliday v. Phillips Petroleum Co.*, 275 F. Supp. 686 (E.D. Ark. 1967); *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *City of Cabot v. Thompson*, 286 Ark. 395, 692 S.W.2d 235 (1985).

§ 4. Limitation on legislative and taxing power — Local bond issues.

No municipal corporation shall be authorized to pass any laws contrary to the general laws of the state; nor levy any tax on real or personal property to a greater extent, in one year, than five mills on the dollar of the assessed value of the same; Provided: That, to pay indebtedness existing at the time of the adoption of this Constitution, an additional tax of not more than five mills on the dollar, may be levied.

The fiscal affairs of counties, cities and incorporated towns shall be conducted on a sound financial basis, and no county court or levying board or agent of any county shall make or authorize any contract or make any allowance for any purpose whatsoever in excess of the revenue from all sources for the fiscal year in which said contract or allowance is made; nor shall any county judge, county clerk, or other county officer, sign or issue any scrip warrant or make any allowance in excess of the revenue from all sources for the current fiscal year; nor shall any city council, board of aldermen, board of public affairs, or commissioners, of any city of the first or second class, or any incorporated town, enter into any contract or make any allowance for any purpose whatsoever, or authorize the issuance of any contract or warrants, scrip or other evidences of indebtedness in excess of the revenue for such city or town for the current fiscal year; nor shall any

mayor, city clerk, or recorder, or any other officer or officers, however designated, of any city of the first or second class or incorporated town sign or issue scrip, warrant or other certificate of indebtedness of excess of the revenue from all sources for the current fiscal year.

Provided, however, to secure funds to pay indebtedness outstanding at the time of the adoption of this amendment, counties, cities, and incorporated towns may issue interest bearing certificates of indebtedness or bonds with interest coupons for the payment of which a county or city tax, in addition to that now authorized, not exceeding three mills may be levied for the time as provided by law until such indebtedness is paid.

Where the annual report of any city or county in the State of Arkansas shows that scrip, warrants or other certificate of indebtedness had been issued in excess of the total revenue for that year, the officer or officers of the county or city or incorporated town who authorized, signed or issued such scrip, warrants or other certificates of indebtedness shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than five hundred dollars nor more than ten thousand dollars, and shall be removed from office. [As amended by Const. Amend. 10.]

Publisher's Notes. Ark. Const. Amend. 10 added the last three paragraphs.

Cross References. Maximum amount of levy of taxes by cities or towns, § 26-102.

RESEARCH REFERENCES

Ark. L. Rev. Mechanic's Liens on Projects Financed by Act 9 [of 1960], 28 Ark. L. Rev. 280.

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Note, Revenue Bonds — The Election Requirement: City of Hot Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

CASE NOTES

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In General.

A municipal corporation has only those powers expressly conferred by the legislature and those necessarily or fairly implied as incident to or essential for the attainment of purposes expressly declared. *Bennett v. Hope*, 204 Ark. 147, 161 S.W.2d 186 (1942).

Construction.

A portion of this section is a penal law and that part constituting a penal law must be strictly construed. *Warren v. State*, 232 Ark. 823, 340 S.W.2d 400 (1960).

Amendments.

Amendment No. 10, authorizing the issuance of municipal bonds to pay debts and also authorizing an additional levy of taxes, was self-executing. *Cumnock v. City of Little Rock*, 168 Ark. 777, 271 S.W. 466 (1925); *Lucas v. Reynolds*, 168 Ark. 1084, 272 S.W. 653 (1925); *Matheny v. Independence County*, 169 Ark. 925, 277 S.W. 22 (1925); *Martin v. State ex rel. Saline County*, 171 Ark. 576, 286 S.W. 873 (1926).

Ark. Const. Amend. 10 repealed by implication a constitutional amendment adopted in 1916 authorizing the levy of a three-mill road tax and the issuance of bonds and left Ark. Const. Amend. 3 relating to the three-mill road tax in full force and effect. *Chesshir v. Copeland*, 182 Ark. 425, 32 S.W.2d 301 (1930).

Bonds.

Former authorization of issuance of public improvement bonds and levy of special tax for payment thereof was repealed by the amendment which limited indebtedness to revenue for the current fiscal year. *Babb v. El Dorado*, 170 Ark. 10, 278 S.W. 649 (1926).

—Existing Indebtedness.

Bonds issued to pay outstanding indebtedness cannot be used to pay indebtedness incurred after adoption of Amendment No. 10 authorizing such issue. *Airheart v. Winfree*, 170 Ark. 1126, 282 S.W. 963 (1926).

Amendment No. 10, allowing the issuance of bonds for existing indebtedness, was not mandatory and mandamus could not be used to compel such issuance. *Lybrand v. Wafford*, 174 Ark. 298, 296 S.W. 729 (Ct. App. 1927).

Amendment No. 10, prohibiting the is-

suance of bonds except to pay indebtedness existing at adoption of Constitution of 1874, did not repeal the amendment authorizing bonds to pay indebtedness outstanding at the adoption of the earlier amendment. *Lybrand v. Wafford*, 174 Ark. 298, 296 S.W. 729 (Ct. App. 1927).

The county court's refusal to issue bonds authorized by Amendment No. 10 to pay warrants outstanding was discretionary and subject to judicial review. *Jackson v. Madison County*, 175 Ark. 826, 300 S.W. 924 (1927).

A county which has issued bonds to pay debts existing prior to October 7, 1924, under Amendment No. 10 may pay indebtedness existing prior to December 7, 1924, from surplus bond account or by supplemental bond issue. *Hagler v. Arkansas County*, 176 Ark. 115, 2 S.W.2d 5 (1928).

One of the purposes of Amendment No. 10 was to keep counties from paying claims of previous years out of current funds where such payments would be in excess of the revenues collected for the year in which the expenses were incurred. *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1944).

—Multiple Issues.

A second and third bond issue, issued to fund balance of county's outstanding bonded indebtedness existing on the effective date of Amendment No. 10, were valid. *Lawrence County v. Townsend*, 202 Ark. 887, 154 S.W.2d 4 (1941).

—Refunding.

The power to issue bonds in the first instance includes the power to refund them, provided the refunding bonds do not increase the amount of the outstanding bonds or the rate of interest. *Ferris v. Stewart*, 200 Ark. 714, 140 S.W.2d 431 (1940).

—Revenue Bonds.

Amendment No. 49 broadened the scope of this section and authorized the issuance of revenue bonds for the express purpose of alleviating unemployment. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960).

Revenue bonds are not general obligations of the county but rather are bonds payable solely from the revenues derived from service charges; therefore, this section is not applicable to the value of the

bonds issued and the bonds did not create an indebtedness exceeding the limitations of this section. *Eaton v. McCuen*, 273 Ark. 154, 617 S.W.2d 341 (1981).

Claims in Excess of Revenues.

The fiscal year under this section is the fiscal year for all purposes, county warrants in excess of revenues for the fiscal year are void, and the holder of a valid warrant may compel payment thereof to the exclusion of the invalid warrants. *McGregor v. Miller*, 173 Ark. 459, 293 S.W. 30 (1927).

County warrants issued in excess of revenues for fiscal year are void, but warrants issued when there is insufficient money in the county treasury to redeem when the fiscal year revenue limit has not been exceeded are not invalid for lack of funds. *Miller v. State ex rel. Woodruff County*, 176 Ark. 889, 1 S.W.2d 998 (1928).

A claim incurred and due when the claim could have been constitutionally paid cannot be allowed when the claim exceeded the revenue for the current fiscal year. *Pulaski County v. Board of Trustees*, 186 Ark. 61, 52 S.W.2d 972 (1932).

All expenses, indispensable or permissive, are prohibited by the amendment if in excess of the county revenue. *Miller County v. Blocker*, 192 Ark. 101, 90 S.W.2d 218 (1936).

The fact that a city levied less tax than the permissible five mill tax was unimportant as to its right to contract as the city's right to contract and incur obligations is limited by the amount which it did collect and not what might have been collected. *Manhattan Rubber Mfg. Div. of Raybestos, Inc. v. Bird*, 208 Ark. 167, 185 S.W.2d 268 (1945).

Proceeding by police chief for a summary judgment for salary due during time he was suspended from duty as chief as the result of an order of the civil service commission, which was subsequently set aside, was an action based upon a statutory liability which did not mature until the appeal of the chief from the civil service commission's order was finally disposed of; therefore, the defense based on the contention that recovery of the amount found due the police chief would be a violation of the Constitution was not available as to years prior to the determination of the appeal. *City of Van Buren v. Matlock*, 208 Ark. 529, 186 S.W.2d 936 (1945).

This section did not prohibit the creation of a debt exceeding current annual revenues if the debt was secured by and payable solely out of the income or assets of a special and separable activity such as a municipal waterworks. *Hink v. Board of Dirs.*, 235 Ark. 107, 357 S.W.2d 271 (1962).

The prosecuting attorney was a proper party plaintiff, in fact, it was his express duty to enforce the terms of this provision of the Constitution dealing with the prohibition against a county judge authorizing any contract in excess of the revenues which was one of the principal issues in this case. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

—Apportionment.

The surety on the county's performance bond for road construction contracts who had paid part of the claimants under such contracts and taken assignments of their claims against the county was entitled to have the county road fund prorated among its claim against the county for reimbursement and the claims of other contract claimants where the county had disallowed such other claims because the total amount of the contract exceeded the revenue for the current year and such claimants had obtained judgment on their claims in the circuit court. *Western Sur. Co. v. Washington County*, 244 Ark. 1227, 429 S.W.2d 99 (1968).

—Burden of Proof.

The burden of proof that a county was unable to build a courthouse and leave sufficient revenue to meet the county's necessary expenses of government is on the taxpayer. *Van Norman v. Reynold*, 177 Ark. 798, 9 S.W.2d 39 (1928).

Taxpayer has burden of showing that the performance of the agreement will require an expenditure of revenues by the city in excess of those for the year in which the contract was made in order to enjoin the contract under this amendment. *Dailey v. City of Little Rock*, 227 Ark. 537, 299 S.W.2d 825 (1957).

Taxpayer could not enjoin contract on ground that it provided for payment of moneys by the city beyond the current fiscal year in contravention of this amendment where there was no testimony as to the amount of revenues of the city for the year and there was no indication that the

agreement would commit the city for an amount in excess of unexpended revenues for the year. *Dailey v. City of Little Rock*, 227 Ark. 537, 299 S.W.2d 825 (1957).

It had to be proven that a contract or allowance was in excess of the revenues of the municipality before payment was barred by this amendment. *Deason v. Rogers*, 247 Ark. 1061, 449 S.W.2d 410 (1970).

Where there was no proof that the contract to lease a building for county use incurred an obligation on the part of the county in excess of the revenues for a fiscal year since, under the lease, the county became obligated to pay rental only currently as the office space was available for use, and there was no showing such obligation would exceed revenues for any fiscal year, the lease was not void under this section. *Searcy County v. Horton*, 270 Ark. 22, 603 S.W.2d 437 (1980).

—Carrying Over.

The constitutional provision prohibiting yearly expenditures by county in excess of yearly revenues does not prohibit the building of county jails but only requires that the apportioned cost per year, when added to other governmental expenditures, not exceed the yearly revenue. *Kirk v. High*, 169 Ark. 152, 273 S.W. 389 (1925).

Expenses incurred for printing and feeding prisoners may be carried over to a subsequent year where not payable in the year incurred because of prior indebtedness although the revenue of the year was sufficient if such prior indebtedness had not existed. *Polk County v. Mena Star Co.*, 175 Ark. 76, 298 S.W. 1002 (1927).

In order to make a purchase in one year, to be paid out of revenues of a succeeding year, the constitutional provisions for issuance of bonds must be followed, and a contract for the sale of a truck to be paid for the following year is void. *City of Little Rock v. White Co.*, 193 Ark. 837, 103 S.W.2d 58 (1937).

A county sheriff must enforce his statutory right to have his claims paid before the revenue for that year is used elsewhere as he is not entitled to payment out of revenue for subsequent years nor to recoupment in settlement of his account for a subsequent year. *Crawford County v. Maxey*, 196 Ark. 361, 118 S.W.2d 257 (1938).

If the payment of jail warrants necessi-

tated carrying over to a succeeding year other general warrants or claims, the excess as to jail warrants due in that year and general warrants and claims would be void unless not funded and accrued prior to the passage of the amendment. *Walker v. Gladish*, 199 Ark. 580, 134 S.W.2d 540 (1939).

—Contracts.

A county contract for culverts was unenforceable and the order therefor was void, even though the purchase was imperative, since the indebtedness for the fiscal year exceeded the revenues for that year. *Dixie Culvert Mfg. Co. v. Perry County*, 174 Ark. 107, 294 S.W. 381 (1927).

Contracts made and warrants issued by a city at a time the fiscal year's revenue had not been exceeded, although subsequently exceeded, are valid. *Chesnutt v. Yates*, 177 Ark. 894, 9 S.W.2d 37 (1928).

Contracts made in excess of the revenue for the year in which made are void, and, since void when made cannot thereafter, in subsequent years, be paid. *Cook v. Shackleford*, 192 Ark. 44, 90 S.W.2d 216 (1936).

When a city purchased fire equipment during a year in which its revenues were in excess of its disbursements, the contract for the purchase of the equipment was not unconstitutional and was valid when made; therefore, a judgment rendered upon failure to pay would be a valid obligation of the city until paid. *Manhattan Rubber Mfg. Div. of Raybestos, Inc. v. Bird*, 208 Ark. 167, 185 S.W.2d 268 (1945).

A sales contract for the payments to be made over a two-year period, in itself, could not have been considered as a certificate of indebtedness. Where it was not shown that defendant issued scrip, warrants, or other certificates of indebtedness in excess of the total revenues for the year 1959, as charged, and it was not shown that the papers he issued in 1960 exceeded the revenues for that year, nor was he charged with issuing excessive paper in 1960, defendant did not violate this amendment. *Warren v. State*, 232 Ark. 823, 340 S.W.2d 400 (1960).

A contract with the county which was void because of a restriction against exceeding current revenues did not give rise to any right of recovery against the county for the value of the consideration passing under the contract, although such consid-

eration was accepted and used by the county. *Little Rock Rd. Mach. Co. v. Jackson County*, 233 Ark. 53, 342 S.W.2d 407 (1961).

Where a contract bound a city to purchase water for a period of fifty years, the purchases would have exceeded the current revenues of the city, and there was no restriction upon the source from which the city's obligation could be paid, the contract was in violation of this section. *Hink v. Board of Dirs.*, 235 Ark. 107, 357 S.W.2d 271 (1962).

Transactions whereby county judge executed contracts without prior authorization by the county court, such contracts, being for road equipment, were void in that installments would be due in future years and interest bearing notes would have to be given. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

The banks purchasing the interest bearing notes were not bona fide purchasers when they clearly showed that some of the contracts came due in 1960 in violation of this section. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

Multi-year contracts entered into by counties or cities are not per se unconstitutional; however, contracts made in one year which must be paid for with the revenues of a subsequent year are prohibited. *Government Servs. Automation, Inc. v. Faulkner County*, 929 F. Supp. 338 (E.D. Ark. 1995).

Service agreement between a computer company and the county which covered a five-year period was valid where the county was only obligated under the agreement for a year at a time because of the agreement's "opt-out" provision; the county was free to terminate the agreement at any time and, therefore, its annual fee obligation could be paid for with the revenues from that year. *Government Servs. Automation, Inc. v. Faulkner County*, 929 F. Supp. 338 (E.D. Ark. 1995).

—Eminent Domain.

Since property may not be taken for public use without compensation, a landowner may present a claim to a county court for damages for such taking of land for use as a highway, notwithstanding the constitutional amendment prohibiting annual indebtedness in excess of annual revenue. *Independence County v. Lester*, 173 Ark. 796, 293 S.W. 743 (1927).

The burden is on the landowner, in a suit to prevent the taking of land, to prove that there were no funds on hand to pay the landowner's claims for damages. *Crawford County v. Simmons*, 175 Ark. 1051, 1 S.W.2d 561 (1928).

The payment for lands taken for highway purposes or damaged incidentally must be from revenues of the fiscal year in which the obligation accrues. *Miller County v. Beasley*, 203 Ark. 370, 156 S.W.2d 791 (1941).

Power of the county to provide for payment of compensation to landowner whose land is condemned for highway purposes is limited by this section, which prohibits making of such payment except from current revenues coming in during the year in which the land is actually taken. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

Where State Highway Commission undertakes to appropriate land under condemnation decree, the owner has the right, under the Constitution, if the financial condition of the county is such that he may not receive the compensation from the county, to go into chancery and enjoin the appropriation of the land until the amount of compensation is agreed upon and either paid or secured. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

The taking of property without immediate compensation violates neither Ark. Const., Art. 2, § 22, nor the 5th and 14th Amendments to the U.S. Constitution, because the landowner has the right to enjoin the condemnation until a bond or other security is furnished. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

—Liability of County Officers.

The county treasurer's action in paying a warrant, void because issued in excess of revenue for the year to which chargeable, is a violation of his official duty for which both the treasurer and his surety are liable. *State for Use of Jackson County v. Murphy*, 192 Ark. 439, 92 S.W.2d 205 (1936).

A county judge and the county clerk, who contracted claims and issued warrants therefor in excess of the total revenue, are immune from civil liability for the claims. *State ex rel. Perry County v. House*, 193 Ark. 282, 99 S.W.2d 834 (1936).

County treasurer and surety are liable for the payment of void warrants issued in excess of the revenue for that particular year. *Fidelity & Cas. Co. v. State ex rel. Columbia County*, 197 Ark. 1027, 126 S.W.2d 293 (1939).

—Limitation on Actions.

An order of a county judge must be attacked within 30 days; where the judge certified the indebtedness of the county and fraud was discovered ten years later, the cause of action is barred. *State ex rel. Montgomery County v. Witt*, 194 Ark. 93, 105 S.W.2d 538 (1937).

The three-year statute of limitation is applicable to a suit against the county treasurer and surety for money paid out on void warrants, and the statute commences to run from the date of the respective settlements. *Fidelity & Cas. Co. v. State ex rel. Columbia County*, 197 Ark. 1027, 126 S.W.2d 293 (1939).

Where the payment of a claim under a contract was not pressed for three years and suit not brought for ten years after the entering of the contract, when the city had no funds brought over from the year of entry of the contract from which the claim might be paid, the seller has lost the right to collect the claim out of revenues in subsequent years. *Eureka Fire Hose Mfg. Co. v. Ozark*, 203 Ark. 709, 158 S.W.2d 679 (1942).

—Obligations to Federal Government.

Even though a contract between a county and the United States would be void under the provisions of this amendment where the United States has fully performed its obligations under the contract, the county would be in no position to defend on the ground of the alleged invalidity of the contract. *Cravens v. United States*, 163 F. Supp. 309 (W.D. Ark. 1958).

—Order of Payment.

A warrant issued in payment of a contractual claim which is merely permissive remains valid after the issuance of a warrant in payment of an indispensable claim when the county's revenue has been expended; validity depending upon the revenues at the time of the warrant's allowance. *Miller County v. Blocker*, 192 Ark. 101, 90 S.W.2d 218 (1936).

In determining the order of payment of its obligations, a county should first pay

its indispensable obligations incurred in discharging functions imposed by the Constitution, then those obligations which are merely permissive. *Miller County v. Blocker*, 192 Ark. 101, 90 S.W.2d 218 (1936).

—Salaries and Fees of Officers.

The county court may not make any allowances in excess of revenues for the fiscal year, either during or after the year in which incurred, even for salaries and fees of officers. *Nelson v. Walker*, 170 Ark. 170, 279 S.W. 11 (1926).

—State Highway Funds.

Funds apportioned to county out of state highway fund are available for the purchase of machinery, and a contract made for such purpose is not void because indebtedness of county would exceed the revenue for the fiscal year. *Anderson v. American State Bank*, 178 Ark. 652, 11 S.W.2d 444 (1928).

—Turnback Funds.

The inhibition of this section limiting indebtedness does not apply to a turnback highway fund received from the state. *Ladd v. Stubblefield*, 195 Ark. 261, 111 S.W.2d 555 (1937); *Taylor v. J.A. Riggs Tractor Co.*, 197 Ark. 383, 122 S.W.2d 608 (1938).

Construction of Courthouse.

A county has the power to contract for the building of a courthouse and to spread the payments over a series of years with a limit on the amount for which a county may contract being the difference between necessary government expenses and the total county revenue. *Lake v. Tatum*, 175 Ark. 90, 1 S.W.2d 554 (1927); *Campbell v. High*, 176 Ark. 222, 2 S.W.2d 1101 (1928); *Norman v. Blair*, 177 Ark. 649, 7 S.W.2d 328 (1928).

A constitutional amendment, number seventeen, vests in the qualified electors of a county the power to determine whether or not a courthouse is to be built, regardless of whether funds are on hand, and also the power to determine, if such funds are not present, whether a tax is to be levied for such purpose. *Carter v. Cain*, 179 Ark. 79, 14 S.W.2d 250 (1929).

Districts.

An improvement district is not a municipality, but derives its powers from the legislature, and, in exercising them, it

acts as the agent of the property owners whose interests are affected by the duties it performs. *Fitzgerald v. Walker*, 55 Ark. 148, 17 S.W. 702 (1891).

A levee district is not a municipal corporation within the constitutional prohibition against the levy of a tax on real property greater than five mills on the dollar. *Saint Louis, I.M. & S. Ry. v. Board of Dirs.*, 103 Ark. 127, 145 S.W. 892 (1912).

Separate districts of Sebastian County are regarded as counties for purposes of authorizing bonds to pay outstanding indebtedness and limiting subsequent expenditures. *Jewitt v. Norris*, 170 Ark. 71, 278 S.W. 652 (1926).

Local Legislative Authority.

The statute conferring the power to regulate hotels and other houses for public entertainment on municipal corporations is not exclusive or inconsistent with the statute requiring all persons keeping public taverns to procure license from the county court. That statute remains in force and others in conflict therewith are void. *State v. Sumpter*, 53 Ark. 342, 13 S.W. 933 (1890).

The legislature has the power to grant authority to pass local laws and to prescribe the method and the agency by whom the same may be enacted, and may delegate legislative authority to the people of a municipality. *Tomlinson Bros. v. Hodges*, 110 Ark. 528, 162 S.W. 64 (1913).

Cities cannot by municipal ordinance broaden the list of beneficiaries as provided by statute under the Fireman's Relief and Pension Fund Act. *McLaughlin v. Retherford*, 207 Ark. 1094, 184 S.W.2d 461 (1944).

The Constitution invests municipalities with power to maintain agencies, such as fire departments, and those so employed are subject to the general laws enacted in the interest of public safety. *Nalley v. Throckmorton*, 212 Ark. 525, 206 S.W.2d 455 (1947).

Statute providing minimum salary for municipal judges did not violate Constitution on the ground that such section constituted an encroachment by the legislature on the city in the matter of finances; the section did not impose a court on any city, but merely set minimum salary for municipal court established by the city. *Stuttgart v. Elms*, 220 Ark. 722, 249 S.W.2d 829 (1952).

City ordinances creating a position of finance director to handle financial affairs of city did not exceed the authority of the legislature to grant powers to municipalities. *Besharse v. City of Blytheville*, 254 Ark. 382, 493 S.W.2d 708 (1973).

Legislature prohibited from delegating to city council authority to repeal legislation allowing use of court costs to support county law library and to erect library building. *Nahlen v. Woods*, 255 Ark. 974, 504 S.W.2d 749 (1974).

The fixing of wages, hours, and the like for city employees is a legislative responsibility which cannot be delegated or bargained away; thus, a proposed "binding-arbitration" ordinance, which was to be a permanent measure providing a procedure by which any future wage controversy with the city police not resolved by agreement was to be referred to an arbitration panel whose decision would be final, binding all parties and not reviewable by any court, would violate the state law and this section. *Czech v. Baer*, 283 Ark. 457, 677 S.W.2d 833 (1984).

—Contrary to State Laws.

A city ordinance prohibiting the sale of wine except on the premises where the grapes were grown and the wine produced is void because in conflict with a state statute. *Morrilton v. Comes*, 75 Ark. 458, 87 S.W. 1024 (1905).

A city ordinance declaring that pinball machines or other gaming devices are a public nuisance and that it is unlawful for any business establishment or individual to possess pinball machines in any manner within the city is void because in conflict with state statutes. *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

It would be unconstitutional to interpret the Home Rule Act as conferring upon a city the authority to repeal, by an implementing ordinance, a general law and substitute its own method of filling vacancies on the Housing Authority Board. *Fort Smith v. Housing Auth.*, 256 Ark. 254, 506 S.W.2d 534 (1974).

A city may not nullify a general act of the legislature by refusing to pass an ordinance or make a specific appropriation. *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977).

Where municipal ordinances had already mandated that nonconforming bill-

boards be altered or removed long before the 1981 amendment to the state law which requires compensation for taking of such signs, such amendment could not be applied retroactively and, without retroactive application of the act, the ordinances were not in contravention of state law. *Donrey Communications Co. v. City of Fayetteville*, 280 Ark. 408, 660 S.W.2d 900 (1983), cert. denied, 466 U.S. 959, 104 S.Ct. 2172, 80 L. Ed. 2d 555 (1984).

City ordinance which prohibited the issuance of a taxicab driver's permit to any person convicted of driving while under the influence of intoxicating liquors within the past three years did not violate this section. *Bolden v. Watt*, 290 Ark. 343, 719 S.W.2d 428 (1986).

—Zoning.

A local zoning ordinance cannot interfere with the legislature's conferral of the power of condemnation to a private entity. *Missouri Pac. R.R. v. 55 Acres of Land*, 947 F. Supp. 1301 (E.D. Ark. 1996).

Recapture of Diverted Funds.

Where a county court has erroneously paid debts existing at time of amendment No. 10 from the general revenue, an act allowing a credit to the general fund against the bond account for the amount so paid is unconstitutional. *Blalock v. Miller*, 175 Ark. 98, 298 S.W. 995 (1927).

Where the school fund was diverted to the county general fund during the years 1940, 1941 and 1942, and said county fund was exhausted for each of such years, no right existed to compel the repayment of the school funds out of moneys accruing to the county general fund in 1944 and subsequent years. *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1944).

A judgment against the county general fund for the recovery of school funds diverted to said fund upon exhaustion of said fund in each of the years in which the diversion occurred, and fixing a lien for the recovery thereof, was an indirect effort to recapture funds that been lost beyond recapture and was erroneous. *Independence County v. Thompson*, 207 Ark. 1031, 184 S.W.2d 63 (1944).

Roads and Bridges.

A bridge construction contract awarded before the amendment prohibiting the expenditure of more than the income of the county for a fiscal year was valid. *Shroll v.*

Newton County, 173 Ark. 1121, 295 S.W. 1 (1927).

The establishment of new county roads or altering old roads must be made in compliance with the provisions of the Constitution and constitutional amendments. *Casey v. Douglas*, 173 Ark. 641, 296 S.W. 705 (1927).

Tax Levies.

The county owes a duty to levy the entire amount permissible, if necessary to retire the outstanding indebtedness, and a partial levy does not exhaust the power to pay the outstanding bonds where a balance remains. *Ferris v. Stewart*, 200 Ark. 714, 140 S.W.2d 431 (1940).

—Courthouse Construction.

Where it affirmatively appears that ample revenue will remain each year, after paying necessary expenses of government, to pay annual installments due on a contract for a courthouse, the levy of a tax for the purpose is a valid order of a quorum court. *Ivy v. Edwards*, 174 Ark. 1167, 298 S.W. 1006 (1927).

—Limitation.

Where bonds had been lawfully issued by a municipal corporation, under a law directing a levy of taxes to pay the bonds, the constitutional limit of five mills for old indebtedness may be exceeded if necessary to pay such debts. Once such a tax has been levied, there is no power to levy another tax of five mills for other indebtedness. *Brodie v. McCabe*, 33 Ark. 690 (1878) (decision prior to 1925 amendment).

The legislature may authorize the electors of a municipality to levy municipal taxes, but the limit on the amount of such levy remains, and the city council and electors, whether acting separately or jointly, may not levy in excess of this amount. *Adamson v. City of Little Rock*, 199 Ark. 435, 134 S.W.2d 558 (1939).

A municipal corporation has no inherent power to levy taxes, but can levy only such taxes as are authorized by law. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

—Mandamus to Compel.

A county court can be compelled by mandamus to levy a tax to pay interest and indebtedness outstanding at time amendment was adopted. *Stranahan,*

Harris & Oatis, Inc. v. Van Buren County, 175 Ark. 678, 300 S.W. 382 (1927).

—Property Taxes.

City ordinance imposing charge for police and fire protection and street lighting was not a property tax where ordinance placed tax on the “resident” or “occupant” of the property as opposed to a tax on the “residence” or upon the “real property.” Holt v. City of Maumelle, 302 Ark. 51, 786 S.W.2d 581 (1990).

—Service Charge.

Where a city ordinance imposed a so-called sanitation tax of \$4.00 per building such a levy was not actually a tax but a charge for service to be rendered and was therefore not invalid. Holman v. Dierks, 217 Ark. 677, 233 S.W.2d 392 (1950).

—Street Improvements.

The power to levy a tax to pay a bond issue for city street improvements is conferred exclusively on the city council. Rhodes v. Stuttgart, 192 Ark. 822, 95 S.W.2d 101 (1936).

—Validity.

A landowner cannot, when sued in ejectment by the purchaser of the land at a tax sale, raise questions as to whether the proceeds had been properly applied and whether the levy was exercised in the manner provided by law. Ingram v. Blackmon, 202 Ark. 769, 152 S.W.2d 315 (1941).

Taxpayers who have paid taxes levied to retire bonds and interest issued under the amendment without complaint for eleven years are estopped to contest the validity of the bond issue and to enjoin the collec-

tion of taxes. Lawrence County v. Townsend, 202 Ark. 887, 154 S.W.2d 4 (1941).

Cited: Brickhouse v. Hill, 167 Ark. 513, 268 S.W. 865 (1925); Combs v. Gray, 170 Ark. 956, 281 S.W. 918 (1926); Martin v. State ex rel. Saline County, 171 Ark. 576, 286 S.W. 873 (1926); American Disinfecting Co. v. Franklin County, 181 Ark. 659, 27 S.W.2d 95 (1930); Lyons Mach. Co. v. Pike County, 192 Ark. 531, 93 S.W.2d 130 (1936); Scaramuzza v. McLeod, 207 Ark. 855, 183 S.W.2d 55 (1944); Layne v. Strode, 229 Ark. 513, 317 S.W.2d 6 (1958); Myhand v. Erwin, 231 Ark. 444, 330 S.W.2d 68 (1959); Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960); Rockefeller v. Hogue, 244 Ark. 1029, 429 S.W.2d 85 (1968); Fort Smith Structural Steel Co. v. Western Sur. Co., 247 F. Supp. 674 (W.D. Ark. 1965); Kirkwood v. Carter, 252 Ark. 1124, 482 S.W.2d 608 (1972); Duty v. Rogers, 255 Ark. 309, 500 S.W.2d 347 (1973); Greig v. Crawford County, 256 Ark. 202, 506 S.W.2d 523 (1973); Mackey v. McDonald, 255 Ark. 978, 504 S.W.2d 726 (1974); Arkansas State Hosp. v. Cleburne County, 271 Ark. 94, 607 S.W.2d 61 (1980); Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981); Arnold v. Northeast Ark. Planning & Consulting, 276 Ark. 5, 631 S.W.2d 610 (1982); Venhaus v. Board of Educ., 280 Ark. 441, 659 S.W.2d 179 (1983); Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984); Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985); Cowger v. State, Dep’t of Aeronautics, 307 Ark. 92, 817 S.W.2d 427 (1991); City of Marion v. Baioni, 312 Ark. 423, 850 S.W.2d 1 (1993); Phillips v. Town of Oak Grove, 333 Ark. 183, 968 S.W.2d 600 (1998).

§ 5. Political subdivisions not to become stockholders in or lend credit to private corporations.

No county, city, town or other municipal corporation, shall become a stockholder in any company, association, or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.

CASE NOTES

ANALYSIS

Charitable contributions.
Consideration.
Facilities boards.

Housing authorities.
Improvement districts.
Industrial development corporations.
Lease of property.
Lending of credit.

Railroads.
Transfer to federal government.
Welfare organizations.

Charitable Contributions.

Waterworks revenue already pledged under trust indenture for payment of revenue bonds may not be used for a subscription to local community chest under an act authorizing donations from revenue of the municipal waterworks system as to do so would impair the obligation of a contract. *City of Little Rock v. Community Chest*, 204 Ark. 562, 163 S.W.2d 522 (1942).

Where chancellor ordered portion of taxpayers' residual funds from illegal designated use tax to be given to assorted charities, she violated this section and the rule of *Bell v. Crawford County*, 287 Ark. 251, 697 S.W.2d 910 (1985), which states that monies collected for one purpose cannot be spent for another purpose. *City of Jacksonville v. Venhaus*, 302 Ark. 204, 788 S.W.2d 478 (1990).

Consideration.

This section was not meant to prohibit a city from agreeing to construct a driveway on private property in lieu of paying cash consideration for an easement. *City of Ft. Smith v. Bates*, 260 Ark. 777, 544 S.W.2d 525 (1976).

Facilities Boards.

Facilities Boards are not the type of company, association, or corporation contemplated by this section; rather, Facilities Boards are agencies created by the counties to carry out various county activities. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

Housing Authorities.

The Urban Development Law does not violate this section. *Rowe v. Housing Auth.*, 220 Ark. 698, 249 S.W.2d 551 (1952).

Improvement Districts.

The authorization of improvement districts to incur indebtedness is not the loan of credit of any county to a corporation or association, and no loan is authorized to be made by the county to the district. *Lee Wilson & Co. v. William R. Compton Bond & Mtg. Co.*, 103 Ark. 452, 146 S.W. 110 (1912); *Board of Dirs. v. Collier*, 104 Ark. 425, 149 S.W. 66 (1912).

A county may appropriate funds to an

improvement district to aid in street improvement. *Shofner v. Dowell*, 168 Ark. 229, 269 S.W. 588 (1925).

A street improvement district is not a company, association, or corporation within the meaning of this section and bid by city to such district is not unconstitutional. *Paris v. Street Imp. Dist. No. 2*, 206 Ark. 926, 175 S.W.2d 199 (1944).

Industrial Development Corporations.

Act authorizing cities and towns to purchase membership in local industrial development corporations was unconstitutional as authorizing municipal corporations to grant financial aid to such corporations. *Halbert v. Helena-West Helena Indus. Dev. Corp.*, 226 Ark. 620, 291 S.W.2d 802 (1956).

Lease of Property.

The leasing of a hospital by municipal government to be operated by a nonprofit corporation was not a violation of this section. *Arkansas Uniform & Linen Supply Co. v. Institutional Servs. Corp.*, 287 Ark. 370, 700 S.W.2d 358 (1985).

Lending of Credit.

A contract of insurance between a school district and a foreign mutual insurance company does not make the school district a stockholder in the insurance company nor to constitute the lending of credit. *Clifton v. School Dist. No. 14*, 192 Ark. 140, 90 S.W.2d 508 (1936).

Obligations and bonds which are payable exclusively from revenues of the agency issuing them are not municipal debts within the prohibition of the loan of municipal credit. *Hogue v. Housing Auth.*, 201 Ark. 263, 144 S.W.2d 49 (1940).

The issuance of revenue bonds by a city to obtain money with which to purchase land and construct manufacturing facilities to alleviate unemployment in that area, being special bonds as distinguished from general obligation bonds, do not violate any of the constitutional provisions. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960).

Railroads.

A town council is prohibited from appropriating money to a railroad to induce the building of the railroad line into the town. *Town of Luxora v. Jonesboro, L.C. & E.R.R.*, 83 Ark. 275, 103 S.W. 605 (1907).

Transfer to Federal Government.

Contemplated transfer of land by city to federal government for use as army air base under deed containing reverter clause did not constitute a diversion of funds under bond issue providing for acquisition of land needed for air base. *City of Blytheville v. Parks*, 221 Ark. 734, 255 S.W.2d 962 (1953).

Welfare Organizations.

A municipal corporation may make an appropriation to a welfare association organized to render aid to the poor of the

city. *Bourland v. Pollock*, 157 Ark. 538, 249 S.W. 360 (1923).

Cited: *Little Rock Chamber of Commerce v. Pulaski County*, 113 Ark. 439, 168 S.W. 848 (1914); *Gordon v. Woodruff County*, 217 Ark. 653, 232 S.W.2d 832 (1950); *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981); *Pogue v. Cooper*, 284 Ark. 105, 679 S.W.2d 207 (1984); *Cortez v. Independence County*, 287 Ark. 279, 698 S.W.2d 291 (1985); *Chapman v. Bevilacqua*, 344 Ark. 262, 42 S.W.3d 378 (2001).

§ 6. General incorporation laws — Charters — Revocation.

Corporations may be formed under general laws; which laws may, from time to time, be altered or repealed. The General Assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators.

RESEARCH REFERENCES

UALR L.J. Mathews, *Corporate Statutes — Which One Applies?*, 13 UALR L.J. 72.

CASE NOTES**ANALYSIS**

In general.

Charter.

Evaluation of stock for tax purposes.

Financial institutions.

Foreign corporations.

Labor relations.

Power to contract.

Regulating rates.

Regulating weights.

Unauthorized corporations.

In General.

Corporations possess only powers which are conferred by the charter creating them, and these powers may be modified or diminished or extinguished. *Ozan Lumber Co. v. Biddie*, 87 Ark. 587, 113 S.W. 796 (1908).

The power of the legislature to alter and amend a corporate charter is not unlimited; the alterations must be reasonable, made in good faith, and consistent with

the scope and object of the act of incorporation. *Arkansas Stave Co. v. State*, 94 Ark. 27, 125 S.W. 1001 (1910).

Charter.

The general laws under which a corporation is formed may constitute the corporation's charter. *Ozan Lumber Co. v. Biddie*, 87 Ark. 587, 113 S.W. 796 (1908).

Before an act changing a charter can be declared unconstitutional under this section, it must appear that the effect of the act is to confiscate the stock or property of the corporation. *Bank of Blytheville v. State*, 148 Ark. 504, 230 S.W. 550 (1921).

Evaluation of Stock for Tax Purposes.

The state has the power to evaluate stock having no par value for the purpose of taxing since there is no element of confiscation in the effect of such evaluation. *State ex rel. Att'y Gen. v. Margay Oil Corp.*, 167 Ark. 614, 269 S.W. 63 (1925).

Financial Institutions.

A statute imposing certain liabilities retroactively may be upheld since it does not impair the contractual relationship between the banks affected and their stockholders, but alters the relationship between the state and the bank, the power to do so being possessed by the legislature. *Davis v. Moore*, 130 Ark. 128, 197 S.W. 295 (1917).

An act making stockholders of banks liable for public funds deposited therein is valid as within the right of the legislature to alter the charters of corporations. *Bank of Blytheville v. State*, 148 Ark. 504, 230 S.W. 550 (1921).

Foreign Corporations.

The state has the same right to impose terms on a foreign corporation already in the state as it has to impose them on a corporation which came into the state after the enactment of the statute. *Western Union Tel. Co. v. State*, 82 Ark. 309, 101 S.W. 748 (1907).

A corporation authorized to do business in the state, although not actually doing business therein, may be required to pay a franchise tax under the state's right to prescribe terms and conditions on which foreign corporations may be authorized to do business in the state. *State ex rel. Applegate v. Chicago Land & Timber Co.*, 173 Ark. 234, 292 S.W. 98 (1927).

Labor Relations.

The act requiring the payment of wages earned at the time of discharge of an employee, such wages to continue, if not paid, is valid as to corporations as within the right of the legislature to alter charters of incorporation. *Leep v. St. Louis, I.M. & S. Ry.*, 58 Ark. 407, 25 S.W. 75, appeal dismissed, 259 U.S. 267, 15 S. Ct. 1042, 40 L. Ed. 142 (1894); *St. Louis, I. Mt. & S.P. Ry. v. Paul*, 173 U.S. 404, 19 S. Ct. 419, 43 L. Ed. 746 (1899); *Kansas City, P. & G.R.R. v. Moon*, 66 Ark. 409, 50 S.W. 996 (1899).

An act making corporations liable for injuries to a servant by the negligence of a fellow servant is a reasonable exercise of

the power to amend corporate charters. *Ozan Lumber Co. v. Biddie*, 87 Ark. 587, 113 S.W. 796 (1908).

The state may not surrender its police power to guard the safety of workers, and the common-law fellow-servant rule may be abrogated by statute even when included in the charter of a corporation. *Phillips Petro. Co. v. Jenkins*, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).

Power to Contract.

The state may regulate the power of corporations to contract when the interest of the public so demands, but the legislature cannot remove the power to contract nor regulate it to the extent as to render it ineffectual or substantially impair the object of incorporation. *Union Sawmill Co. v. Felsenthal*, 85 Ark. 346, 108 S.W. 217 (1908).

The legislature is authorized to regulate the powers of corporations to enter into contracts when the regulation is not subversive of any vested rights of the object of the charter. *Arkansas Stave Co. v. State*, 94 Ark. 27, 125 S.W. 1001 (1910).

Regulating Rates.

The General Assembly may alter or repeal any general law regulating railroad rates for carrying passengers without impairing the obligation of any contract if done in a manner in which no injustice shall be done to the corporation. *Saint Louis & S.F.R.R. v. Gill*, 54 Ark. 101, 15 S.W. 18 (1891).

Regulating Weights.

The legislature may require domestic coal mining corporations to pay for coal purchased by weight to be weighed before screened and paid for in accordance with that weight. *Woodson v. State*, 69 Ark. 521, 65 S.W. 465 (1900).

Unauthorized Corporations.

The legislature may prohibit unauthorized corporations from doing business under a name embracing the words trust company. *McKee v. American Trust Co.*, 166 Ark. 480, 266 S.W. 293 (1924).

§ 7. State not to be stockholder.

Except as herein provided, the State shall never become a stockholder in, or subscribe to, or be interested in the stock of any corporation or association.

CASE NOTES

Cited: Halbert v. Helena-West Helena Indus. Dev. Corp., 226 Ark. 620, 291 S.W.2d 802 (1956); Missouri Pac. R.R. v. W.S. Fox & Sons, 251 Ark. 247, 472 S.W.2d 726 (1971); McCutchen v. Huckabee, 328 Ark. 202, 943 S.W.2d 225 (1997).

§ 8. Private corporations — Issuance of stocks or bonds — Conditions and restrictions.

No private corporation shall issue stocks or bonds, except for money or property actually received, or labor done; and all fictitious increase of stock or indebtedness shall be void; nor shall the stock or bonded indebtedness of any private corporation be increased, except in pursuance of general laws; nor until the consent of the persons holding the larger amount, in value, of stock, shall be obtained at a meeting held after notice given, for a period not less than sixty days, in pursuance of law.

RESEARCH REFERENCES

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UALR L.J. Brewer, An Overview of the 1987 Arkansas Business Corporation Act, 10 UALR L.J. 431.

CASE NOTES

ANALYSIS

Assessments.
Bonds.
Consideration.
—Invalid.
—Notes.
—Valid.
—In kind.
—Notes.
—Preexisting debt.
—Services rendered.
Increasing indebtedness.

Assessments.

A note may be given for a shareholder's proportion of a voluntary assessment as such an assessment is not the issue of stock or a fictitious increase of stock or indebtedness. *Ellis v. Jonesboro Trust Co.*, 179 Ark. 615, 17 S.W.2d 324 (1929).

Bonds.

Bonds issued by a railroad in payment

for the property, rights, and privileges acquired upon its reorganization are not within the constitutional prohibition. *Memphis & L.R.R. v. Dow*, 120 U.S. 287, 7 S. Ct. 482, 30 L. Ed. 595 (1887).

Consideration.

One lending money and taking as collateral security the stock certificate, originally obtained on a note, is entitled to enforce a lien thereon, as the stock certificate was regular in form and carried no notice of any infirmity on its face. *Park v. Bank of Lockesburg*, 178 Ark. 669, 11 S.W.2d 483 (1928); *J.M. Prods., Inc. v. Arkansas Capital Corp.*, 51 Ark. App. 85, 910 S.W.2d 702 (1995).

Where corporation brings action to cancel stock given to veterinarian in return for unperfected formula which corporation is set up to perfect and manufacture, and the formula was perfected by veterinarian for corporation and corporation prospered,

corporation could not contend veterinarian's stock was void as not having been issued for money or property actually received or labor done where no innocent third parties change in stock ownership or fraud was involved. *Murray v. Murray Labs., Inc.*, 223 Ark. 907, 270 S.W.2d 927 (1954).

—Invalid.

Notes given for the purchase price of stock, loans of money by a corporation so that the money might be used to purchase the stock of the corporation, and notes given in renewal of a note for the purchase of stock are all void as violating the constitutional prohibition against issuance of stock except for money or property received. *Bank of Dermott v. Measel*, 172 Ark. 193, 287 S.W. 1017 (1926).

In a transaction where stock was purchased at less than par value in violation of the Constitution, and the corporation agreed to buy back, at less than par, a portion of such stock, the corporation is estopped from asserting the invalidity of the contract. *Blanks v. American S. Trust Co.*, 177 Ark. 832, 9 S.W.2d 310 (1928).

Where the assets of an insolvent bank have been sold to a new bank, the stock of which was paid for by checks against funds in the insolvent bank, the transaction violates the Constitution. *Krumpen v. Taylor*, 183 Ark. 1046, 40 S.W.2d 775 (1931).

—Notes.

The taking of notes in payment of the capital stock of a bank is unlawful as violating the Constitution. *Bank of Commerce v. Goolsby*, 129 Ark. 416, 196 S.W. 803 (1917).

A note given for stock in a private corporation is void, except in the hands of an innocent purchaser. *Bank of Manila v. Wallace*, 177 Ark. 190, 5 S.W.2d 937 (1928); *Roy v. Recker*, 225 F. Supp. 743 (E.D. Ark. 1963).

An attempted sale of bank stock, purchased by a bank official with bank money, is invalid where the consideration for the stock was in the form of notes given by the purchasers. *Taylor v. Gordon*, 180 Ark. 753, 22 S.W.2d 561 (1929).

In a case where a corporation has issued certificates of stock in consideration of notes, both the notes and the certificates

are void and unenforceable. *Lepanto Gin Co. v. Barnes*, 182 Ark. 422, 31 S.W.2d 746 (1930).

—Valid.

Loans made by an insurance company upon real estate mortgages, where the funds were used by the borrower to purchase stock of the corporation, are valid and the notes and mortgages are not void. *Fox v. Republic Nat'l Life Ins. Co.*, 203 Ark. 827, 159 S.W.2d 67 (1942).

—In Kind.

The issuance of capital stock of a corporation for the reasonable value of property is valid. *Austin v. Dermott Canning Co.*, 182 Ark. 1128, 34 S.W.2d 773 (1931).

—Notes.

A note given for the balance due on a stock subscription contract is not void where the stock is not to be issued until the money is paid. *Thomas v. Arkansas State Fair Ass'n*, 181 Ark. 748, 27 S.W.2d 515 (1930).

—Preexisting Debt.

Issuance of stock by corporation in payment of preexisting debt was not violative of the provisions of this section prohibiting the issuance of stock except for money or property actually received or labor done where it was not shown that the corporation did not receive money, property or labor from the creditor. *Whitwell v. Henry*, 225 Ark. 987, 286 S.W.2d 852 (1956).

—Services Rendered.

A corporation may issue its stock in payment for services rendered the corporation in the absence of a prohibitory law. *Harriage v. Daley*, 121 Ark. 23, 180 S.W. 333 (1915); *Town & Country Trailer Sales, Inc. v. Godwin*, 233 Ark. 307, 344 S.W.2d 338 (1961).

Increasing Indebtedness.

Although notice of a stockholders' meeting is required 60 days before the meeting, one who has subscribed for stock and paid therefor, where the stock increase was authorized at a meeting not complying with the notice requirements, is estopped from denying that he is a stockholder. *Steele v. Hughes*, 104 Ark. 517, 149 S.W. 336 (1912).

Cited: *Arkota Indus., Inc. v. Naekel*, 274 Ark. 173, 623 S.W.2d 194 (1981).

§ 9. Taking of property by corporation — Compensation.

No property, nor right of way, shall be appropriated to the use of any corporation, until full compensation therefor shall be first made to the owner, in money; or first secured to him by a deposit of money; which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained by a jury of twelve men, in a court of competent jurisdiction, as shall be prescribed by law.

CASE NOTES

ANALYSIS

Applicability.

Compensation.

—Benefits to landowner.

—Jury trial.

—Manner of payment.

—Market value.

—Prior payment.

—Property damaged without taking.

—Setoff.

Delegation of power.

Jury trial.

Political corporations.

Procedure.

State property.

Applicability.

This section does not suggest the right of eminent domain is limited to corporations; to read this section with such implied restrictions would be contrary to the court's interpretation of the general grant of eminent domain to the state in article 2, § 23. *Young v. Energy Transp. Sys.*, 278 Ark. 146, 644 S.W.2d 266 (1983).

A public utility's right to condemn private property is governed by this section. *Arkansas Power & Light Co. v. Potlatch Forest, Inc.*, 288 Ark. 525, 707 S.W.2d 317 (1986).

Compensation.

Damages in the exercise of eminent domain may include those for land actually taken and those damages done incidentally to the remainder of the tract as well. *Little Rock & Ft. Smith Ry. v. Allister*, 68 Ark. 600, 60 S.W. 953 (1901).

It was proper to award the owner of land across which a gas company condemned an easement for a pipe line, with full right of the owner to continue use of the surface, the value of the fee where the owner did not ask severance damages. *Arkansas La. Gas Co. v. Burkley*, 242 Ark. 662, 416 S.W.2d 263 (1967).

In an action by a gas company to condemn an easement for a gas transmission line, an instruction to the jury that the landowners were entitled to recover the full market value of the land within the easement and in addition to recover damages, if any, to the remaining lands caused by the taking was proper. *Arkansas La. Gas Co. v. Howell*, 244 Ark. 86, 423 S.W.2d 867 (1968).

A private corporation as condemnor is liable to the landowner for the fair market value of the lands actually taken and any damage resulting to the remainder of the tract. *Arkansas La. Gas. Co. v. James*, 15 Ark. App. 184, 692 S.W.2d 761 (1985).

—Benefits to Landowner.

In determining damages the value of benefits received by the landowner may be taken into consideration. *Cate v. Crawford County*, 176 Ark. 873, 4 S.W.2d 516 (1928).

—Jury Trial.

In condemnation proceeding the right to trial by jury extends only to the final assessment of compensation, and the legislature may prescribe a different method for ascertaining the amount to be deposited for security of compensation. *Ex parte Reynolds*, 52 Ark. 330, 12 S.W. 570 (1889); *Board of Dirs. v. Redditt*, 79 Ark. 154, 95 S.W. 482 (1906).

—Manner of Payment.

A check from Arkansas Power and Light Company redeemable in federal reserve notes was compensation required by law in an eminent domain case. *Daniels v. Arkansas Power & Light Co.*, 269 Ark. 390, 601 S.W.2d 845 (1980).

—Market Value.

Damages for land taken by eminent domain include the market value of land actually taken and the depreciation of the market value of the remaining portion.

Saint Louis, I.M. & S. Ry. v. Theodore Maxfield Co., 94 Ark. 135, 126 S.W. 83 (1910).

Just compensation is the fair cash market value at the time of taking of the land, or what the land would be reasonably worth on the market for a cash price. Rinke v. Union Special School Dist., 174 Ark. 59, 294 S.W. 410 (1927).

Just compensation includes the fair market value, but not the fair cash market value, and such value is determined by what one who need not sell will take for land and what one who need not buy will give as the price of the land. Baucum v. Arkansas Power & Light Co., 179 Ark. 154, 15 S.W.2d 399 (1929).

When railroad posted bond, obtained an order of taking, entered upon the property and completed its work, it was obligated to pay just compensation based upon the difference in fair market value before and after the taking. Thompson v. Thompson, 253 Ark. 343, 485 S.W.2d 725 (1972).

This section requires payment of the full fair market value of the right-of-way to the owner. Arkansas Power & Light Co. v. Potlatch Forest, Inc., 288 Ark. 525, 707 S.W.2d 317 (1986).

—Prior Payment.

A deposit made in court in condemnation proceedings remains as security to the landowner for the compensation that may be finally awarded, subject to the court's final order. Fort Smith & W.R.R. v. Hare, 116 Ark. 10, 172 S.W. 835 (1914).

The state or subdivisions thereof may exercise the right of eminent domain without the actual payment of damages before such exercise. Barton v. Edwards, 120 Ark. 239, 179 S.W. 354 (1915).

—Property Damaged Without Taking.

Property damaged in the assertion of the right of eminent domain must be paid for as well as property actually taken. Hot Springs Ry. v. Williamson, 45 Ark. 429 (1885), *aff'd*, 136 U.S. 121, 10 S. Ct. 955, 34 L. Ed. 355 (1890).

—Setoff.

The constitutional restriction placed on private corporate condemnors which prevents any setoff in favor of the corporation for special benefits is intended to protect the landowner's rights to just compensa-

tion. Arkansas La. Gas Co. v. James, 15 Ark. App. 184, 692 S.W.2d 761 (1985).

Delegation of Power.

The legislature may confer on an individual or a partnership the power to condemn private property for public purposes. Young v. Energy Transp. Sys., 278 Ark. 146, 644 S.W.2d 266 (1983).

Jury Trial.

Condemnation proceedings are not common-law actions, and need not provide for a trial in the course of the common law. Board of Dirs. v. Redditt, 79 Ark. 154, 95 S.W. 482 (1906).

The constitutional guaranty of trial by jury in condemnation proceedings relates only to condemnation by private corporations. Young v. Red Fork Levee Dist., 124 Ark. 61, 186 S.W. 604 (1916).

Political Corporations.

The provision of the Constitution providing for compensation to the owner when land is taken by a corporation does not apply to land taken for a public use by a municipal corporation. Paragould v. Milner, 114 Ark. 334, 170 S.W. 78 (1914).

The constitutional provision extends only to condemnations by private corporations, and an assessment of damages by jury is not guaranteed where lands are taken by a drainage district. Dickerson v. Tri-County Drainage Dist., 138 Ark. 471, 212 S.W. 334 (1919).

A landowner cannot enjoin commissioners from proceeding to straighten street, taking property therefor without first paying full compensation, since the constitutional prohibition applies only to private corporation. Cannon v. Felsenthal, 180 Ark. 1075, 24 S.W.2d 856 (1930); McMahan v. Carroll County, 238 Ark. 812, 384 S.W.2d 488 (1964).

Procedure.

The legislature may provide the procedure for the condemnation of private property for public use within constitutional bounds. Helena v. Arkansas Util. Co., 208 Ark. 442, 186 S.W.2d 783 (1945); DeSalvo v. Arkansas La. Gas Co., 239 F. Supp. 312 (E.D. Ark. 1965).

Where the public utility had ample access to its right-of-way without the necessity of crossing the lands of the landowner since there were numerous existing public roads on the landowner's lands which

crossed the right-of-way, it had to specifically describe, condemn, and pay just compensation for any alternate routes of reasonable access. *Arkansas Power & Light Co. v. Potlatch Forest, Inc.*, 288 Ark. 525, 707 S.W.2d 317 (1986).

State Property.

The legislature may grant the use of state property for the construction of tele-

phone lines without demanding the payment of compensation for such use. *Arkansas State Hwy. Comm'n v. Southwestern Bell Tel. Co.*, 206 Ark. 1099, 178 S.W.2d 1002 (1944).

Cited: *Sebastian Lake Devs., Inc. v. United Tel. Co.*, 240 Ark. 76, 398 S.W.2d 208 (1966).

§ 10. Issue of circulating paper.

No act of the General Assembly shall be passed authorizing the issue of bills, notes, or other paper which may circulate as money.

CASE NOTES

Cited: *Citicorp Indus. Credit, Inc. v. Wal-Mart Stores, Inc.*, 305 Ark. 530, 809 S.W.2d 815 (1991).

§ 11. Foreign corporations doing business in state.

Foreign corporations may be authorized to do business in this State, under such limitations and restrictions as may be prescribed by law; Provided: That no such corporation shall do any business in this State, except while it maintains therein one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served; and, as to contracts made or business done in this State, they shall be subject to the same regulations, limitations and liabilities as like corporations of this State; and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this State; nor shall they have power to condemn or appropriate private property.

CASE NOTES

ANALYSIS

Agents for process.
Doing business in state.
— Out-of-state transactions.
Domesticated foreign corporation.
Forfeiture of privilege.
Regulation.
Taxation.
Withdrawal from state.

Agents for Process.

A foreign insurance company which has appointed the auditor of the state as its agent to receive service of process may be sued in the manner designated upon any cause of action arising within the state, whether arising out of its insurance con-

tracts or not. *American Cas. Ins. Co. v. Lea*, 56 Ark. 539, 20 S.W. 416 (1892).

The power to designate by statute the officer upon whom service may be made in suits against foreign corporations relates to business and transactions within the jurisdiction of the state, and does not extend beyond the borders of the state. *Protas v. Modern Inv. Corp.*, 198 Ark. 300, 128 S.W.2d 360 (1939).

Doing Business in State.

A bond to secure payment of sums due under a contract between a resident of the state and a foreign corporation is a part of the inter-state commerce carried on by the sale of the goods and can not be affected by the statute prohibiting business within

the state unless certain requirements are complied with. *Gunn v. White Sewing Mach. Co.*, 57 Ark. 24, 20 S.W. 591 (1892).

The taking of a single mortgage by a foreign corporation to secure a past-due debt is not the doing of business within the constitutional prohibition. *Florsheim Bros. Dry Goods Co. v. Laster*, 60 Ark. 120, 29 S.W. 34 (1895).

Word "privileges" in this section related solely to contracts made and business done in the state and giving an out-of-state corporation 10 additional days to respond to a complaint did not amount to a privilege as to contracts made or business done in Arkansas; the Arkansas Rules of Civil Procedure did not govern contracts made or business done in the state. *Smith v. Sidney Moncrief Pontiac, Buick, GMC Co.*, 353 Ark. 701, 120 S.W.3d 525 (2003).

—Out-of-State Transactions.

A foreign corporation which makes an agreement for a loan in another state, and the notes and securities are delivered and the money paid there, is not doing business in the state merely because the land on which the money was loaned is in Arkansas. *Scruggs v. Scottish-American Mtg. Co.*, 54 Ark. 566, 16 S.W. 563 (1891).

A Missouri corporation can not be sued in Arkansas on an insurance contract made in Missouri with a resident of that state, covering property located in Missouri. *National Liberty Ins. Co. v. Trattner*, 173 Ark. 480, 292 S.W. 677 (1927).

Domesticated Foreign Corporation.

A corporation may be foreign for the purposes of diversity jurisdiction yet be treated as domestic and capable of exercising the power of eminent domain under state law. *Missouri Pac. R.R. v. 55 Acres of Land*, 947 F. Supp. 1301 (E.D. Ark. 1996).

Forfeiture of Privilege.

The legislature may provide for the forfeiture of the right to do business in the state for the removal of a case to the federal court in the case of corporations not engaged in interstate commerce. *State ex rel. Kimberlite Diamond Mining & Washing Co. v. Hodges*, 114 Ark. 155, 169 S.W. 942 (1914).

Regulation.

A foreign corporation doing business in the state before the adoption of an act

declaring certain contracts void complies with the Constitution if it has an agent and a known place of business in the state. *Saint Louis, A. & T. Ry. v. Fire Ass'n*, 60 Ark. 325, 30 S.W. 350 (1895).

Foreign corporations engaging in the business of mining coal in the state are subject to the provisions of the act requiring scales and measures to be kept on hand under certain conditions. *Woodson v. State*, 69 Ark. 521, 65 S.W. 465 (1900).

The legislature may require that a foreign insurance company can not do business within the state if they are members of a pool or combination entered anywhere to affect insurance rates anywhere in the world. *Hartford Fire Ins. Co. v. State*, 76 Ark. 303, 89 S.W. 42 (1905).

Foreign corporations may be required to file a certified copy of their articles of incorporation with the secretary of state and to pay a reasonable fee therefor when the same requirement is made of domestic corporations. *Western Union Tel. Co. v. State*, 82 Ark. 309, 101 S.W. 748 (1907).

A foreign corporation admitted to do business in the state is subject to the same regulations as domestic corporations and may exercise no greater powers than may be exercised by domestic corporations. *Phillips Petro. Co. v. Jenkins*, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936); *Arkansas-Louisiana Elec. Coop. v. Arkansas Pub. Serv. Comm'n*, 210 Ark. 84, 194 S.W.2d 673 (1946).

Foreign corporations become guests of this state and the state has authority to permit foreign corporations to do business here and to regulate the manner in which their business is done. *Missouri P.R.R. v. W.S. Fox & Sons*, 251 Ark. 247, 472 S.W.2d 726 (1971).

Taxation.

The personal property of a foreign corporation used or employed in the state is taxable in the state like similar property of domestic corporations or citizens. *McDaniel v. Texarkana Cooperage & Mfg. Co.*, 94 Ark. 235, 126 S.W. 727 (1910).

The right to enjoy corporate privileges is a subject of taxation, not restricted by the Constitution. *Saint Louis S.W. Ry. v. State ex rel. Norwood*, 106 Ark. 321, 152 S.W. 110 (1913), *aff'd*, 235 U.S. 350, 35 S. Ct. 99, 59 L. Ed. 2d 65 (1914).

This provision is not applicable to the computation of franchise taxes for either

domestic or foreign corporations. *Franklin Elec. Co. v. Heath*, 261 Ark. 269, 547 S.W.2d 755 (1977).

Withdrawal from State.

A foreign corporation, which ceases to do business in the state and to comply with the laws of the state, is held to have withdrawn from the state, and reentry requires compliance with the new rules. *Phoenix Assurance Co. v. Ludwig*, 87 Ark. 465, 113 S.W. 34 (1908).

A foreign corporation is subject to suit for three years after withdrawing from the state on contracts made subsequent to its entry into the state and to be performed therein. *Crown Cent. Petroleum Corp. v. Speer*, 206 Ark. 216, 174 S.W.2d 547 (1943).

Cited: *Union Pac. R.R. v. 174 Acres*, 193 F.3d 944 (8th Cir. 1999).

§ 12. State not to assume liabilities of political subdivisions or private corporations — Indebtedness to state — Release.

Except as herein otherwise provided, the State shall never assume, or pay the debt or liability of any county, town, city or other corporation whatever; or any part thereof; unless such debt or liability shall have been created to repel invasion, suppress insurrection, or to provide for the public welfare and defense. Nor shall the indebtedness of any corporation to the State, ever be released, or in any manner discharged, save by payment into the public treasury.

RESEARCH REFERENCES

UALR L.J. Jans, Survey of Constitutional Law, 3 UALR L.J. 184.

CASE NOTES

ANALYSIS

Matured tax claim.
Private schools.
Road districts.
School districts.

Matured Tax Claim.

A matured tax claim is an indebtedness within the meaning and context of this section. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

Private Schools.

Act requiring payment over to other public schools or nonprofit private schools accredited by the State Board of Education from the funds withheld from closed schools of an amount calculated on a pro rata basis according to the number of students from the closed schools attending a recipient school was not unconstitutional as assumption of payment of the debt or liability of any county, town, city or other corporation whatever, for if a stu-

dent from a closed school attended a private school any resulting debt or liability would be payable to the school, not by it. *Fitzhugh v. Ford*, 230 Ark. 531, 323 S.W.2d 559 (1959).

Road Districts.

A road district is a quasi governmental or state agency of special and limited powers, but is not a corporation within the constitutional prohibition against state assumption of the debts of counties. *Bush v. Martineau*, 174 Ark. 214, 295 S.W. 9 (1927).

School Districts.

The constitutional prohibition against state assumption of debts does not apply to school districts as the limitation referred to private corporations or those engaged in private enterprises. *Ruff v. Womack*, 174 Ark. 971, 298 S.W. 222 (1927).

Cited: *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

ARTICLE 13

COUNTIES, COUNTY SEATS AND COUNTY LINES

SECTION.

1. Size of counties — Exceptions.
2. Consent of voters to change of county lines.
3. Change of county seats — Conditions — New counties.

SECTION.

4. Lines of new counties — Distance from county seat of adjoining county — Exception.
5. Sebastian County — Districts.

§ 1. Size of counties — Exceptions.

No county now established shall be reduced to an area of less than six hundred square miles, nor to less than five thousand inhabitants: nor shall any new county be established with less than six hundred square miles and five thousand inhabitants: Provided, that this section shall not apply to the counties of Lafayette, Pope and Johnson, nor be so construed as to prevent the General Assembly from changing the line between the counties of Pope and Johnson.

CASE NOTES

ANALYSIS

In general.
Boundary lines.
Reduction of area.

In General.

A county is a municipal corporation created by the legislature and subject to its exercise of power, and the county derives all its power from the legislature unless otherwise provided by the Constitution. *Eagle v. Beard*, 33 Ark. 497 (1878).

A county is a political subdivision of the state which, for the more convenient administration of justice and for some purposes of local self-government, is invested with a few functions of corporate existence. *Pulaski v. Reeve*, 42 Ark. 54 (1883).

Boundary Lines.

Courts will take judicial notice of county boundary lines. *Crow v. Roane*, 86 Ark. 172, 110 S.W. 801 (1908).

Reduction of Area.

An act of the legislature in reducing the area of a county below 600 square miles is unconstitutional. *Bittle v. Stuart*, 34 Ark. 224 (1879).

In a challenge to an act reducing the size of a county, the legislative determination is conclusive of any disputed fact, unless the act shows on its face that it is invalid. *Greene County v. Clay County*, 135 Ark. 301, 205 S.W. 709 (1918).

Cited: *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981).

§ 2. Consent of voters to change of county lines.

No part of a county shall be taken off to form a new county, or a part thereof, without the consent of a majority of the voters in such part proposed to be taken off.

CASE NOTES

In General.

The power to change county lines is

inherent in the legislature subject to express constitutional restrictions and the

essential requisites of the state which are implied in our form of government. *Reynolds v. Holland*, 35 Ark. 56 (1879).

The legislature may change the boundaries of counties without the consent of

the inhabitants except where a part is to be taken off to form a new county. *Reynolds v. Holland*, 35 Ark. 56 (1879); *Pulaski County v. County Judge*, 37 Ark. 339 (1881).

§ 3. Change of county seats — Conditions — New counties.

No county seat shall be established or changed without the consent of a majority of the qualified voters of the county to be affected by such change, nor until the place at which it is proposed to establish or change such county seat shall be fully designated: Provided, That in formation of new counties, the county seat may be located temporarily by provisions of law.

CASE NOTES

ANALYSIS

Changing site within town.
Jurisdiction of county court.
Majority of voters.
Removal proceedings.

Changing Site within Town.

The constitutional provision refers to the removal of the county seat from one city to another and not to a removal from one site to another in the same town. *Graham v. Nix*, 102 Ark. 277, 144 S.W. 214 (1912).

Jurisdiction of County Court.

The county court has exclusive original jurisdiction over the question of removal of a county seat. *Russell v. Jacoway*, 33 Ark. 191 (1878).

Majority of Voters.

As there have been no assessments of poll taxes since 1947, and therefore, no lists kept of persons liable to pay poll taxes, a majority of those voting at the

election is sufficient to change a county seat. *Vance v. Johnson*, 238 Ark. 1009, 386 S.W.2d 240 (1965).

Removal Proceedings.

The circuit court has the power, upon proper showing, to stay a removal proceeding during the pendency of an appeal from a judgment of removal. *Reese v. Steel*, 73 Ark. 66, 83 S.W. 335 (1904).

The changing or removal of a courthouse is a special proceeding. *Velvin v. Kent*, 198 Ark. 267, 128 S.W.2d 686 (1939).

Cited: *Vance v. Austell*, 45 Ark. 400 (1885); *Saunders v. Erwin*, 49 Ark. 376, 5 S.W. 703 (1887); *Williamson v. Russey*, 73 Ark. 270, 84 S.W. 229 (1904); *Sailor v. Rankin*, 125 Ark. 557, 189 S.W. 357 (1916); *Velvin v. Kent*, 198 Ark. 267, 128 S.W.2d 686 (1939); *Glover v. Hot Springs Kennel Club, Inc.*, 230 Ark. 544, 323 S.W.2d 902 (1959); *Rockefeller v. Matthews*, 249 Ark. 341, 459 S.W.2d 110 (1970).

§ 4. Lines of new counties — Distance from county seat of adjoining county — Exception.

In the formation of new counties no line thereof shall run within ten miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County.

CASE NOTES

District Lines.

Right to form new county lines clearly gives legislature right to change district

lines — as by annexation. *Smalley v. City of Fort Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965).

§ 5. Sebastian County — Districts.

Sebastian County may have two districts and two county seats, at which county, probate and circuit courts shall be held as may be provided by law, each district paying its own expenses.

CASE NOTES

ANALYSIS

County courts.

—Change of venue.

—Jury drawn from one district.

County officials.

County taxes.

Districts.

Effect of Amend. 55.

Local concerns.

Local option election.

Quorum courts.

Recording instruments.

County Courts.

The county court of the Ft. Smith District and the county court of the Greenwood District each have exclusive jurisdiction over the matters set out in Ark. Const., art. 7, § 1, each as completely as if they were held in separate counties, but neither has jurisdiction over the county as a whole as to such matters. *Scaramuzza v. McLeod*, 207 Ark. 855, 183 S.W.2d 55 (1944).

—Change of Venue.

The creation of two judicial districts in Sebastian County does not permit division into two counties so as to permit a change of venue from one to the other. *Williams v. State*, 160 Ark. 587, 255 S.W. 314 (1923).

—Jury Drawn from One District.

Where jury in attempted rape and aggravated robbery case was drawn only from the Ft. Smith District of Sebastian County, the trial court properly refused to grant motion quashing the jury panel since this section and § 16-32-103 both clearly contemplate that a jury may properly be drawn from only one district within a county having more than one district. *Morgan v. State*, 273 Ark. 252, 618 S.W.2d 161 (1981).

County Officials.

Sebastian County is one unit for the purposes of law relating to county boards of education and the county supervisor. *Reeves v. Been*, 217 Ark. 67, 228 S.W.2d 609 (1950).

County Taxes.

The expense of maintaining two judicial districts in a county is a county expense, and a county tax to pay it must be levied at a uniform rate upon all the taxable property of the county. *Hutchinson v. Ozark Land Co.*, 57 Ark. 554, 22 S.W. 173 (1893).

Districts.

Section does not compel Sebastian County to have two districts nor specify their division line and does not prevent a change in district line by annexation of property. *Smalley v. City of Fort Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965).

Effect of Amend. 55.

Prior Supreme Court decision (*Robinson v. Greenwood Dist.*, Sebastian County Quorum Court, 258 Ark. 798, 528 S.W.2d 930 (1975)) that held that Sebastian County could not be administered by two separate quorum courts under this section did not hold that Ark. Const., Amend. 55 effectively repeals this section, since nothing in Ark. Const., Amend. 55 is inconsistent with this section with regard to Sebastian County having two county seats, or would result in jury drawn from only one district in Sebastian County being quashed. *Morgan v. State*, 273 Ark. 252, 618 S.W.2d 161 (1981).

Local Concerns.

The initiated act authorizing local option elections was held to authorize such elections in both districts for the reason that such districts are in effect separate counties so far as the "local concerns" of this county are involved. *Scaramuzza v. McLeod*, 207 Ark. 855, 183 S.W.2d 55 (1944).

Local Option Election.

Where an order of the county court of the Greenwood District directed a local option election to be held not only in that district but in the entire county, and the county court of the Ft. Smith District

ordered likewise, but where separate ballots were prepared for each district and they voted separately and separate returns were made by each district, these showing that one district voted wet, the other dry, the vote of the one district was not affected by the vote of the other. *Scaramuzza v. McLeod*, 207 Ark. 855, 183 S.W.2d 55 (1944).

Where an order of the county court of the Greenwood District directed a local option election to be held not only in that district but in the entire county, and the county court of the Ft. Smith District ordered likewise, such orders were effective only as to the respective districts. *Scaramuzza v. McLeod*, 207 Ark. 855, 183 S.W.2d 55 (1944).

Quorum Courts.

Since Amendment 55 to the Constitution makes no provision for any county to

have more than one quorum court and makes no reference whatsoever to a county being divided into districts as does this section, this section can no longer be relied upon to maintain two separate quorum courts in Sebastian County. *Robinson v. Greenwood Dist.*, 258 Ark. 798, 528 S.W.2d 930 (1975).

Recording Instruments.

The two districts of Sebastian County are, in effect, separate counties so far as the recording requirements of § 18-50-103 are involved. *Henson v. Fleet Mtg. Co.*, 319 Ark. 491, 892 S.W.2d 250 (1995).

Cited: *Meyers v. State*, 271 Ark. 886, 611 S.W.2d 514 (1981); *In re Henson*, 157 Bankr. 867 (Bankr. W.D. Ark. 1993); *Caldwell v. State*, 322 Ark. 543, 910 S.W.2d 667 (1995).

ARTICLE 14

EDUCATION

SECTION.

1. Free school system.
2. School fund — Use — Purposes.
3. School tax — Budget — Approval of tax rate (Const., Art. 14, § 3, as

SECTION.

- amended by Const. Amend. 11, Const. Amend. 40, amended, and Const. Amend. 74).
4. Supervision of schools.

CASE NOTES

Cited: *Riley v. City of Corning*, 294 Ark. 480, 743 S.W.2d 820 (1988).

§ 1. Free school system.

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it. [As amended by Const. Amend. 53.]

Publisher's Notes. Prior to amendment this section read: "Intelligence and virtue being the safeguards of liberty, and the bulwark of a free and good government, the State shall ever maintain a

general, suitable and efficient system of free schools, whereby all persons in the State, between the ages of six and twenty-one years, may receive gratuitous instruction."

RESEARCH REFERENCES

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Ark. L. Rev. Procedural Due Process — Student Suspensions, 29 Ark. L. Rev. 239. Gitelman and McIvor, Domicile, Resi-

dence and Going to School in Arkansas, 37 Ark. L. Rev. 843.

UALR L.J. Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

CASE NOTES

ANALYSIS

In general.
Blind school.
Facilities.
High schools.
Higher education.
Management by legislature.
Registration fee.
State funding.
Teachers' salaries.

In General.

The Constitution vests in the legislature the duty and authority to make provisions for the establishment, maintenance and support of a common school system in the state. *Saline County Bd. of Educ. v. Hot Spring County Bd. of Educ.*, 270 Ark. 136, 603 S.W.2d 413 (1980).

Blind School.

A blind school is provided for by an independent provision of the Constitution and is not a component part of the common school system. *Walls v. State Bd. of Educ.*, 195 Ark. 955, 116 S.W.2d 354 (1938).

Facilities.

Approximate equality and uniformity of facilities is all that can be required of the free schools, although school facilities must be afforded where taxation for maintenance is imposed. *Krause v. Thompson*, 138 Ark. 571, 211 S.W. 925 (1919).

High Schools.

High schools are common schools within the constitutional meaning. *Dickinson v. Edmondson*, 120 Ark. 80, 178 S.W. 930 (1915).

Higher Education.

There is nothing in the state Constitution to prohibit the legislature from extending aid to higher education nor from developing educational opportunities for our people in the fields of vocational and technical training. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

Management by Legislature.

The legislature may control at will the arrangement and management of school districts. *Krause v. Thompson*, 138 Ark. 571, 211 S.W. 925 (1919); *Garrett v. Faubus*, 230 Ark. 445, 323 S.W.2d 877 (1959).

The legislature has a free hand in the establishment of school districts and may classify them in any reasonable, uniform manner. *LeMaire v. Henderson*, 174 Ark. 936, 298 S.W. 327 (1927).

Although the legislature is required to make provision for the support of the common schools, this purpose need not be accomplished by local or special legislation. *Webb v. Adams*, 180 Ark. 713, 23 S.W.2d 617 (1929).

Statutes authorized the assignment of a portion of a dissolved school district made by the Saline County Board to the contiguous Magnet Cove District in Hot Spring County, even though such portion was not located in Saline County, since the Quality Education Act indicates that county lines are not controlling, and this is not an infringement of the constitutional integrity of counties. *Saline County Bd. of Educ. v. Hot Spring County Bd. of Educ.*, 270 Ark. 136, 603 S.W.2d 413 (1980).

Registration Fee.

Charge of registration fee in district school was illegal. *Dowell v. School Dist.*

No. 1, 220 Ark. 828, 250 S.W.2d 127 (1952).

State Funding.

The statutory method of financing public schools and of vocational funding, under which system the local tax base determined the amount of state funding received by a district and school districts were required to establish vocational programs with local funds before receiving state funds for such programs, violated the requirement of this section that the state provide a general, suitable, and efficient system of education. *Dupree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983).

The school funding system in place between 1994 and 2000 violated the requirement of this section that the General Assembly provide an adequate, general, suitable, and efficient system of free public schools; thus, the General Assembly was directed to remedy the system prior to January 1, 2004. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

This section does not mandate state-provided early childhood education. *Lake*

View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

Teachers' Salaries.

A differential in salaries of teachers based solely upon differences in individual attainments and worth is not repugnant to the 14th Amendment of the United States Constitution; it is equally true that a differential based solely on race or color is prohibited. *Morris v. Williams*, 149 F.2d 703 (8th Cir. 1945).

Cited: *Morris v. Williams*, 149 F.2d 703 (8th Cir. 1945); *Harmony Grove Sch. Dist. No. 1 v. Camden Sch. Dist. No. 35*, 227 Ark. 902, 302 S.W.2d 281 (1957); *Davis v. Board of Educ.*, 362 F. Supp. 730 (E.D. Ark. 1973); *Goodwin v. Cross County Sch. Dist. No. 7*, 394 F. Supp. 417 (E.D. Ark. 1973); *Fortman v. Texarkana Sch. Dist. No. 7*, 257 Ark. 130, 514 S.W.2d 720 (1974); *Horton v. Marshall Pub. Sch.*, 589 F. Supp. 95 (W.D. Ark. 1984); *Turner v. Woodruff*, 286 Ark. 66, 689 S.W.2d 527 (1985); *Loyd v. Knight*, 288 Ark. 474, 706 S.W.2d 393 (1986); *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

§ 2. School fund — Use — Purposes.

No money or property belonging to the public school fund, or to this State, for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

RESEARCH REFERENCES

Ark. L. Rev. Note, The Establishment Clause and Prayers in Public High School Graduations: *Jones v. Clear Creek Inde-*

pendent School District, 47 Ark. L. Rev. 653.

CASE NOTES

ANALYSIS

Assessment for local improvements.
Desegregation costs.
Recoupment of funds.
Religious purposes.

Assessment for Local Improvements.

Any use of school funds raised from taxation that results in benefits to those funds or property or aids in the stated purposes for which these funds may be expended would not be an unconstitu-

tional diversion and the use of such funds for the payment of assessments for local improvements beneficial to school property does not violate this section. *Rainwater v. Haynes*, 244 Ark. 1191, 428 S.W.2d 254 (1968).

Desegregation Costs.

Any use of school funds that results in benefits to school funds or property, or aids in the stated purposes for which these funds may be expended, is not an

unconstitutional diversion; and where public school fund monies were appropriated to pay federally mandated costs of desegregation cases and attorney's fees, they were used for the benefit of public education. *Magnolia Sch. Dist. No. 14 v. Arkansas State Bd. of Educ.*, 303 Ark. 666, 799 S.W.2d 791 (1990).

Recoupment of Funds.

The legislative enactments which provide recoupment of overpaid funds are a valid legislative exercise and do not violate this section. *Fayetteville Sch. Dist. No. 1 v. Arkansas State Bd. of Educ.*, 313 Ark. 1, 852 S.W.2d 122 (1993).

Religious Purposes.

The reading of Bible verses and recita-

tion of the Lord's Prayer over a school's intercom system and the distribution of Gideon Bibles, where the superintendent and principal permitted these practices and the school board was aware of them, constituted the utilization of tax supported school system to aid religious practices in violation of the establishment clause of the First and Fourteenth Amendments to the Constitution. *Goodwin v. Cross County Sch. Dist. No. 7*, 394 F. Supp. 417 (E.D. Ark. 1973).

Cited: *Fitzhugh v. Ford*, 230 Ark. 531, 323 S.W.2d 559 (1959); *Special School Dist. v. Sebastian County*, 277 Ark. 326, 641 S.W.2d 702 (1982); *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

§ 3. School tax — Budget — Approval of tax rate (Const., Art. 14, § 3, as amended by Const. Amend. 11, Const. Amend. 40, amended, and Const. Amend. 74).

(a) The General Assembly shall provide for the support of common schools by general law. In order to provide quality education, it is the goal of this state to provide a fair system for the distribution of funds. It is recognized that, in providing such a system, some funding variations may be necessary. The primary reason for allowing such variations is to allow school districts, to the extent permissible, to raise additional funds to enhance the educational system within the school district. It is further recognized that funding variations or restrictions thereon may be necessary in order to comply with, or due to, other provisions of this Constitution, the United States Constitution, state or federal laws, or court orders.

(b)(1) There is established a uniform rate of ad valorem property tax of twenty-five (25) mills to be levied on the assessed value of all taxable real, personal, and utility property in the state to be used solely for maintenance and operation of the schools.

(2) Except as provided in this subsection the uniform rate of tax shall not be an additional levy for maintenance and operation of the schools but shall replace a portion of the existing rate of tax levied by each school district available for maintenance and operation of schools in the school district. The rate of tax available for maintenance and operation levied by each school district on the effective date of this amendment shall be reduced to reflect the levy of the uniform rate of tax. If the rate of tax available for maintenance and operation levied by a school district on the effective date of this amendment exceeds the uniform rate of tax, the excess rate of tax shall continue to be levied by the school district until changed as provided in subsection (c)(1). If the rate of tax available for maintenance and operation levied by a school district on the effective date of this amendment is less than the uniform

rate of tax, the uniform rate of tax shall nevertheless be levied in the district.

(3) The uniform rate of tax shall be assessed and collected in the same manner as other school property taxes, but the net revenues from the uniform rate of tax shall be remitted to the State Treasurer and distributed by the state to the school districts as provided by law. No portion of the revenues from the uniform rate of tax shall be retained by the state. The revenues so distributed shall be used by the school districts solely for maintenance and operation of schools.

(4) The General Assembly may by law propose an increase or decrease in the uniform rate of tax and submit the question to the electors of the state at the next general election. If a majority of the electors of the state voting on the issue vote For the proposed increase or decrease in the uniform rate of tax, the uniform rate of tax shall be increased or decreased as approved. If a majority of the electors of the state voting on the issue vote Against the proposed increase or decrease in the uniform rate of tax, the uniform rate of tax shall continue to be levied at the rate for the year in which the election is held.

(c)(1) In addition to the uniform rate of tax provided in subsection (b), school districts are authorized to levy, by a vote of the qualified electors respectively thereof, an annual ad valorem property tax on the assessed value of taxable real, personal, and utility property for the maintenance and operation of schools and the retirement of indebtedness. The Board of Directors of each school district shall prepare, approve and make public not less than sixty (60) days in advance of the annual school election a proposed budget of expenditures deemed necessary to provide for the foregoing purposes, together with a rate of tax levy sufficient to provide the funds therefor, including the rate under any continuing levy for the retirement of indebtedness. The Board of Directors shall submit the tax at the annual school election or at such other time as may be provided by law. If a majority of the qualified voters in the school district voting in the school election approve the rate of tax proposed by the Board of Directors, then the tax at the rate approved shall be collected as provided by law. In the event a majority of the qualified electors voting in the school election disapprove the proposed rate of tax, then the tax shall be collected at the rate approved in the last preceding school election. However, if the rate last approved has been modified pursuant to subsection (b) or (c)(2) of this section, then the tax shall be collected at the modified rate until another rate is approved.

(2) The tax levied by a school district pursuant to subsection (c)(1) of this section may be reduced pursuant to procedures provided by law if the tax would cause the state or district to be out of compliance with any other provision of this Constitution, the United States Constitution, state or federal law, or court order.

(3) No tax levied pursuant to subsection (c)(1) of this section shall be appropriated to any other district than that for which it is levied.

(d) For the purposes of this section, "maintenance and operation" means such expenses for the general maintenance and operation of

schools as may be defined by law. [As amended by Const. Amends 11, 40 and 74.]

Publisher's Notes. Prior to amendment, this section read: "The General Assembly shall provide, by general laws, for the support of Common Schools by taxes, which shall never exceed in any one year two mills on the dollar on the taxable property of the State; and by an annual per capita tax of one dollar, to be assessed on every male inhabitant of this State over the age of twenty-one years; Provided, The General Assembly may, by general law, authorize school districts to levy, by a vote of the qualified electors of such district, a tax not to exceed five mills on the dollar in any one year for school purposes; Provided further, That no such tax shall be appropriated to any other purpose, nor to any other district than that for which it was levied."

An amendment adopted in 1906 (see Acts 1905, p. 833) raised the two-mill state tax to three mills and raised the authorized five-mill district tax to seven mills.

An amendment adopted in 1916 (see Acts 1917, p. 2304) raised the authorized seven-mill district tax to twelve mills.

As amended by Ark. Const. Amend. 11, this section read: "The General Assembly shall provide by the general laws for support of common schools by taxes, which shall never exceed in any one year three mills on the dollar on the taxable property in the state, and by an annual per capita tax of one dollar, to be assessed on every male inhabitant of this State over the age of twenty-one-years. Provided that the General Assembly may, by general law, authorize school districts to levy by a vote of the qualified electors of such districts a tax not to exceed eighteen mills on the dollar in any one year for the maintenance of schools, the erection and equipment of school buildings and the retirement of existing indebtedness for buildings.

"Provided further that no such tax shall be appropriated for any other purpose nor to any other district than that for which it was levied."

As amended by Ark. Const. Amend. 40, this section read: "The General Assembly shall provide for the support of common schools by general law, including an annual per capita tax of one dollar, to be

assessed on every male inhabitant of this State over the age of twenty-one years; and school districts are hereby authorized to levy by a vote of the qualified electors respectively thereof an annual tax for the maintenance of schools, the erection and equipment of school buildings and the retirement of existing indebtedness, the amount of such tax to be determined in the following manner:

"The Board of Directors of each school district shall prepare, approve and make public not less than sixty (60) days in advance of the annual school election a proposed budget of expenditures deemed necessary to provide for the foregoing purposes, together with a rate of tax levy sufficient to provide the funds therefor, including the rate under any continuing levy for the retirement of indebtedness. If a majority of the qualified voters in said school district voting in the annual school election shall approve the rate of tax so proposed by the Board of Directors, then the tax at the rate so approved shall be collected as provided by law. In the event a majority of said qualified electors voting in said annual school election shall disapprove the proposed rate of tax, then the tax shall be collected at the rate approved in the last preceding annual school election.

"Provided, that no such tax shall be appropriated for any other purpose nor to any other district than that for which it is levied."

Ark. Const. Amend. 74 was proposed by S.J.R. 10 of 1995 and was adopted at the general election on November 5, 1996, and approved by a vote of 407,719 for and 378,017 against.

Ark. Const. Amend. 74, § 2, provided: "Nothing in this amendment shall be construed to diminish the authority of school districts over the supervision of public schools."

Ark. Const. Amend. 74, § 3, provided: "Any provision of the Constitution of the State of Arkansas in conflict with this Amendment is repealed in so far as it is in conflict with this Amendment."

Effective Dates. Ark. Const. Amend. 74, § 4: effective on adoption and shall apply to taxes due in 1997 and thereafter.

Cross References. Implementation of Ark. Const. Amend. 74, § 26-80-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — Educational Financing and Equal Protection, 26 Ark. L. Rev. 69.

UALR L.J. Notes, Constitutional Law — Equal Protection and School Funding in Arkansas, Dupree v. Alma School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1953), 6 UALR L.J. 541.

Annual Survey of Caselaw, Constitutional Law, 25 UALR L.J. 908.

Note, Dupree v. Alma School District No. 30: Mandate for an Equitable State Aid Formula, 37 Ark. L. Rev. 1019.

CASE NOTES

ANALYSIS

In general.

Applicability.

Appraisal for ad valorem assessments.

Elections.

— Ballots.

— Contesting.

— Special election.

Funds.

— Appropriation for other purpose.

— Disbursement.

— Loaning school funds.

— Sale of school lands.

— Sinking fund.

Jurisdiction.

Power of legislature.

School districts.

— Effect of annexation.

Tax levies.

— Existing debt.

In General.

The amendment, which allows funding variances among school districts due to local taxes, did not by itself resolve disparities in per pupil expenditures and opportunities under the equal protection clauses and, therefore, a trial was required in an action by a school district pertaining to the disparity in funds available for education in school districts across the state under the school funding system. *Lake View Sch. Dist. No. 25 v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (2000).

The provisions of § 26-80-204(18)(C) violate the provisions of this amendment relating to millage rates applicable to the public school funding system. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31,

91 S.W.3d 472 (2002), cert. denied, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003).

Applicability.

This section, as amended by Amendment No. 40, does not pertain to the assessment of property nor does it prohibit the payment out of school funds of the school district's pro rata share of the cost of assessing and collecting taxes. *Strawn v. Campbell*, 226 Ark. 449, 291 S.W.2d 508 (1956).

Amendment No. 40 embraced the same subject matter as and superseded former law which set out election procedure for approval of the bond sale and tax levy necessary to create a school building fund. *Lewelling v. Board of Dirs.*, 240 Ark. 237, 398 S.W.2d 665 (1966).

Appraisal for Ad Valorem Assessments.

The law providing for payment of professional property appraisers for the purpose of furnishing such appraisals to the tax assessor as an aid in ad valorem tax assessments and providing for pro rata payment of the expenses by taxing units affected by the assessment contract was not unconstitutional under this section insofar as it related to school districts. *Strawn v. Campbell*, 226 Ark. 449, 291 S.W.2d 508 (1956).

Elections.

— Ballots.

It was proper to include in one levy and on one ballot a tax for the erection of new school buildings and a tax for the retirement of existing indebtedness. *Johnson v.*

Gates, 242 Ark. 631, 415 S.W.2d 329 (1967).

—Contesting.

In a suit by taxpayers seeking to contest the vote by which a school millage tax increase for the erection of a school building was adopted, the school board members were proper defendants rather than the members of the county board of election commissioners. *Henry v. Stuart*, 251 Ark. 415, 473 S.W.2d 165 (1971).

—Special Election.

Amendment No. 40 prohibits imposition of school tax unless issue has been approved by electors at annual school election, approval at special election being prohibited. *Adams v. De Witt Special School Dist. No. 1*, 214 Ark. 771, 218 S.W.2d 359 (1949); *Sims v. Hazen School Dist. No. 2*, 215 Ark. 536, 221 S.W.2d 401 (1949).

Funds.

A school fund should bear its proportion in paying the attorney's fee for recovering school funds. *Board of Educ. v. Lonoke County*, 181 Ark. 1046, 29 S.W.2d 268 (1930).

—Appropriation for Other Purpose.

A tax voted for school building purposes may be appropriated for other school purposes alone. *School Dist. v. West Hartford Special School Dist.*, 102 Ark. 261, 143 S.W. 895 (1912).

Commissions on school funds earned and paid into county treasury cannot be covered into county general fund. *County Bd. of Educ. v. Austin*, 169 Ark. 436, 276 S.W. 2 (1925).

Money voted for general school purposes cannot lawfully be appropriated for payment of bonds or interest. *Horne v. Paragould Special School Dist. No. 1*, 186 Ark. 1000, 57 S.W.2d 568 (1933); *Pledger v. Cutrell*, 189 Ark. 562, 74 S.W.2d 646 (1934).

Excess of funds remaining after annual payments are made on obligation for a loan obtained from State Board of Education from a revolving loan fund may be used for other school purposes. *Oak Grove Consol. School Dist. No. 9 v. Fitzgerald*, 198 Ark. 507, 129 S.W.2d 223 (1939).

The prohibition of appropriation of a school tax for any other purpose or to any other district than that for which levied

relates only to school taxes and not to general county taxes. *McCall v. Armstrong*, 199 Ark. 1131, 137 S.W.2d 241 (1940).

The pledge of a building fund for the retirement of bonds proposed to be issued to pay the outstanding non-bonded indebtedness incurred for the maintenance of the schools is not void where the question of a building fund for the purpose is submitted by ballot. *Lakeside Special School Dist. v. Gaines*, 202 Ark. 778, 153 S.W.2d 149 (1941).

The County Salary Act of Clay County providing for the surplus school funds to be transferred to a sinking fund and then to the county general fund after the payment of salaries and expenses was an unconstitutional diversion of such school funds. *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1944).

The law providing for consolidation of schools was not unconstitutional on ground that tax money voted by school district was being used for nonschool purposes. *Bates v. Orr*, 236 Ark. 499, 367 S.W.2d 122 (1963).

Last sentence on ballot which provided that surplus revenue from all building fund millage may be used for other school purposes did not offend this amendment. *Lewelling v. Board of Dirs. of Mansfield School Dist. No. 76*, 240 Ark. 237, 398 S.W.2d 665 (1966).

Use of school funds raised from taxation that results in benefits to those funds or property or aids in the stated purposes for which these funds may be expended for the payment of assessments for local improvements beneficial to school property does not violate this section. *Rainwater v. Haynes*, 244 Ark. 1191, 428 S.W.2d 254 (1968).

—Disbursement.

The constitutional provision as to taxes is self-executing and no specific biennial appropriation by the legislature is necessary to authorize the payment of school funds for common school purposes. *Dickinson v. Edmondson*, 120 Ark. 80, 178 S.W. 930 (1915).

The salary of the county superintendent may be paid out of the common school fund. *Little River County Bd. of Educ. v. Ashdown Special School Dist.*, 156 Ark. 549, 247 S.W. 70 (1923).

A school warrant is payable in the order

of its registration, when all warrants cannot be paid, and is payable out of the proceeds of the tax collected for the purpose for which the warrant has been issued. *McCall v. Armstrong*, 199 Ark. 1131, 137 S.W.2d 241 (1940).

—Loaning School Funds.

Money from a permanent school fund may be loaned to the state school equalizing fund or to needy districts. *Ruff v. Womack*, 174 Ark. 971, 298 S.W. 222 (1927); *State Bd. of Educ. v. Ayccock*, 198 Ark. 640, 130 S.W.2d 6 (1939).

—Sale of School Lands.

Funds arising from the sale of school lands of a particular section may be directed to permanent school funds of the state, title to the lands being in the state. *Sloan v. Blytheville Special Sch. Dist. No. 5*, 169 Ark. 77, 273 S.W. 397 (1925).

—Sinking Fund.

The electors of a school district may vote a sinking fund to be levied each succeeding year until money borrowed is repaid. *Ruff v. Womack*, 174 Ark. 971, 298 S.W. 222 (1927).

Jurisdiction.

School taxes are not county taxes and, thus, exclusive jurisdiction regarding school taxation claims does not lie within county courts. *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

Power of Legislature.

The legislature may determine what is a necessary expense of government. *State ex rel. Att'y Gen. v. Moore*, 76 Ark. 197, 88 S.W. 881 (1905).

The legislature has full and complete power to provide for the support of the common schools by taxes except as restricted by the Constitution. *Special School Dist. No. 60 v. Special School Dist. No. 2*, 181 Ark. 253, 25 S.W.2d 443 (1930).

The statutory method of financing public schools, under which system the local tax base determined the amount of state funding received by a district and school districts were required to establish vocational programs with local funds before receiving state funds for such programs, violated the equal protection guarantees of Ark. Const., art. 2, §§ 2, 3 and 18 and the requirement of Ark. Const., art. 14, § 1 that the state provide a general, suitable and efficient system of education.

Dupree v. Alma Sch. Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983).

School Districts.

When a city or town is organized into a single school district, territory thereafter annexed would be included in the district; territory which had been previously annexed to the city or town for school purposes would not be embraced in the new organization. *Beavers v. State*, 60 Ark. 124, 29 S.W. 144 (1895).

Funds of an original school district apportioned to the new district before organization thereof was complete may be retained by the new district. *Evins v. Batchelor*, 61 Ark. 521, 33 S.W. 1055 (1896).

A newly formed school district is not entitled to share in a tax voted by the old district to sustain the schools for the ensuing year but not levied at the formation of the new district, but only in the surplus remaining after paying all expenses of the old district for the year. *School Dist. No. 15 v. School Dist.*, 63 Ark. 433, 39 S.W. 264 (1897).

Where school territory has been taken from one school district and given to another, the tax funds raised by the district from which taken may be apportioned between the two districts. *School Dist. v. West Hartford Special School Dist.*, 102 Ark. 261, 143 S.W. 895 (1912).

The law providing for calling special election for purpose of determining if county should be a county equalizing school district and limiting number of mills electors in school district could place on themselves was unconstitutional under this amendment. *Henry v. Tarpley*, 230 Ark. 722, 324 S.W.2d 503 (1959).

—Effect of Annexation.

Where two small districts, whose electors had exercised their rights and fixed the rate of taxation for all property within the districts, were annexed to an existing school district where other electors had voted for a somewhat higher millage rate, the quorum court's decision to levy school taxes at the rate approved by the electors in each district during the year of merger was reasonable and just. *Atkinson v. El Dorado Sch. Dist. No. 15*, 267 Ark. 212, 590 S.W.2d 5 (1979).

Tax Levies.

District school taxes may not be levied in cities and towns organized into single

school districts upon the estimate of the board of school directors and without a vote of the electors at the district. *Cole v. Blackwell*, 38 Ark. 271 (1881).

Taxes levied and collected by common school districts which are combined may be expended by the new district. *Bonner v. Snipes*, 103 Ark. 298, 147 S.W. 56 (1912).

—Existing Debt.

The constitutional authorization of a tax for the maintenance of schools is not limited to future maintenance, but may also apply to a valid existing indebtedness. *Lakeside Special School Dist. v. Gaines*, 202 Ark. 778, 153 S.W.2d 149 (1941).

Cited: *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *Lavender v. Rogers*,

232 Ark. 673, 339 S.W.2d 598 (1960); *Lavender v. Rogers*, 233 Ark. 161, 343 S.W.2d 103 (1961); *Faubus v. Miles*, 237 Ark. 957, 377 S.W.2d 601 (1964); *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974); *Special School Dist. v. Sebastian County*, 277 Ark. 326, 641 S.W.2d 702 (1982); *Altus-Denning Sch. Dist. No. 31 v. Franklin County*, 568 F. Supp. 95 (W.D. Ark. 1983); *Dupree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 778 F. Supp. 1013 (E.D. Ark. 1991); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 971 F.2d 160 (8th Cir. 1992); *East Poinsett County Sch. Dist. No. 14 v. Massey*, 315 Ark. 163, 866 S.W.2d 369 (1993).

§ 4. Supervision of schools.

The supervision of public schools, and the execution of the laws regulating the same, shall be vested in and confided to, such officers as may be provided for by the General Assembly.

CASE NOTES

Cited: *Reeves v. Been*, 217 Ark. 67, 228 S.W.2d 609 (1950).

ARTICLE 15

IMPEACHMENT AND ADDRESS

SECTION.

1. Officers subject to impeachment — Grounds.
2. Impeachment by House — Trial by Senate — Presiding officer.

SECTION.

3. Officers removable by Governor upon address.

§ 1. Officers subject to impeachment — Grounds.

The Governor and all State officers, Judges of the Supreme and Circuit Courts, Chancellors and Prosecuting Attorneys, shall be liable to impeachment for high crimes and misdemeanors, and gross misconduct in office; but the judgment shall go no further than removal from office and disqualification to hold any office of honor, trust or profit under this State. An impeachment, whether successful or not, shall be no bar to an indictment.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the

trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred

on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts ...".

Cross References. Impeachment, manner of, § 21-12-201 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct Under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

Wills, Constitutional Crisis: Can the Governor (or Other State Officeholder) Be Removed from Office in a Court Action

after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

CASE NOTES

In General.

The constitutional provisions for impeachment are a complete scheme for the suspension and removal of state officers. *Speer v. Wood*, 128 Ark. 183, 193 S.W. 785 (1917).

The legislature may not authorize the temporary suspension of a prosecuting

attorney during the pendency of the trial upon an indictment. *Speer v. Wood*, 128 Ark. 183, 193 S.W. 785 (1917).

Cited: *Rockefeller v. Hogue*, 246 Ark. 712, 439 S.W.2d 805 (1969); *Weems v. Anderson*, 257 Ark. 376, 516 S.W.2d 895 (1974).

§ 2. Impeachment by House — Trial by Senate — Presiding officer.

The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members thereof. The Chief Justice shall preside, unless he is impeached or otherwise disqualified, when the Senate shall select a presiding officer.

RESEARCH REFERENCES

Ark. L. Rev. Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

Wills, Constitutional Crisis: Can the Governor (or Other State Officeholder) Be Removed from Office in a Court Action

after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

CASE NOTES

Cited: *Fireman's Ins. Co. v. Arkansas State Claims Comm'n*, 301 Ark. 451, 784 S.W.2d 771 (1990).

§ 3. Officers removable by Governor upon address.

The governor, upon the joint address of two-thirds of all the members elected to each House of the General Assembly, for good cause, may remove the Auditor, Treasurer, Secretary of State, Attorney-General, Judges of the Supreme and Circuit Courts, Chancellors and Prosecuting Attorneys.

Publisher’s Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that “jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts ...”.

RESEARCH REFERENCES

Ark. L. Rev. Impeachment, Address and the Removal of Judges in Arkansas: An Historical Perspective, 32 Ark. L. Rev. 253.

Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

ARTICLE 16

FINANCE AND TAXATION

SECTION.

- 1. Lending credit — Bond issues — Interest-bearing warrants.
- 2. Debts of state — Payment.
- 3. Making profit out of or misusing public funds — Penalty.
- 4. Salaries and fees of state officers.
- 5. Property taxed according to value — Procedures for valuation — Tax exemptions.
- 6. Other tax exemptions forbidden.
- 7. Taxation of corporate property.
- 8. Maximum rate of state taxes.
- 9. County taxes — Limitation.
- 10. Payment of county and municipal taxes.

SECTION.

- 11. Levy and appropriation of taxes.
- 12. Disbursement of funds — Appropriation required.
- 13. Illegal exactions.
- 14. Procedure for adjustment of taxes after reappraisal or reassessment of property.
- 15. Assessment of residential property and agricultural, pasture, timber, residential and commercial land.
- 16. Providing for exemption of value of residence of person 65 or over.

RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d, State Taxation, § 92 et seq.

C.J.S. 84 C.J.S., Taxation, § 4 et seq.

§ 1. Lending credit — Bond issues — Interest-bearing warrants.

Neither the State nor any city, county, town or other municipality in this State shall ever lend its credit for any purpose whatever; nor shall any county, city or town or municipality ever issue any interest bearing evidences of indebtedness, except such bonds as may be authorized by law to provide for and secure the payment of the indebtedness existing at the time of the adoption of the Constitution of 1874, and the State shall never issue any interest-bearing treasury warrants or scrip. [As amended in 1918 — see Publisher's Notes.]

Publisher's Notes. An amendment approved in 1918 and declared in effect after the decision in *Brickhouse v. Hill*, 167 Ark. 513, 268 S.W. 865 (1925), made minor changes in the original section and added paragraphs authorizing bond issues for certain purposes in incorporated towns of 1,000 or more population and cities of the first and second class. For full text of the amendment, see Acts 1925, p. 1123.

The 1918 amendment was deemed superseded by a 1926 amendment, which is currently numbered as Ark. Const. Amend. 13 (See Acts 1927, p. 1210); the 1918 amendment does not appear in prior digests and compilations and is not included in the amendments to which the Secretary of State has assigned numbers.

Ark. Const. Amend. 13 essentially incorporated the first paragraph of the then-existing section and rewrote or deleted the additional paragraphs. However, Ark. Const. Amend. 62, § 11, repealed Ark. Const. Amend. 13. The Arkansas Supreme

Court held, in *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986), that Ark. Const. Amend. 62 was intended to repeal only language added to this section by Ark. Const. Amend. 13, which the court interpreted as meaning only the 11 paragraphs added by the amendment, but not the pre-existing first paragraph; however, the opinion makes no mention of the changes or additions made by the 1918 amendment. The section appears above as originally enacted in the 1874 Constitution but incorporates the changes made in the paragraph by the 1918 amendment.

The 1918 amendment made minor punctuation changes and substituted "the indebtedness existing at the time of the adoption of the Constitution of 1874" for "the present existing indebtedness."

With respect to issuance of bonds, this section may be superseded by Ark. Const. Amends. 62 and 65. See also Ark. Const. Amend. 20.

RESEARCH REFERENCES

Ark. L. Notes. Gitelman, *The Arkansas Supreme Court and Municipal Revenue Bonds*, 1985 Ark. L. Notes 27.

Ark. L. Rev. Comment, *Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog*, 39 Ark. L. Rev. 499.

UALR L.J. *Legislative Survey, Bonds*, 8 UALR L.J. 551.

Note, Revenue Bonds — The Election Requirement: City of Hot Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

Arkansas Law Survey, Wiltshire, Business Law, 9 UALR L.J. 83.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

CASE NOTES

ANALYSIS

Damages.
Donation of money.
Improvement districts.
Interest.
—Notes.

Lending credit.
Local lease agreements.
Repeal of amendment.
Revenue bonds.
School districts.
State.

Damages.

Where the county government had uncollected money due on past sales, the taxpayers should have been allowed to recover as damages the amount of money still owed to the county as result of the extension of credit. *Dudley v. Little River County*, 305 Ark. 102, 805 S.W.2d 645 (1991).

Donation of Money.

A county or city has the constitutional power to donate money for a public purpose in those instances where the General Assembly has designated the activity that is to be benefited. *Kerr v. East Cent. Ark. Regional Hous. Auth.*, 208 Ark. 625, 187 S.W.2d 189 (1945).

Improvement Districts.

An improvement district is not a municipality or its agent; it obtains an answer from the legislature and acts as the agent of the property owners whose interests are affected by the duties the district performs. *Fitzgerald v. Walker*, 55 Ark. 148, 17 S.W. 702 (1891).

Although counties may not lend their credit or issue interest-bearing evidences of debt, the legislature may create an improvement district which consists of an entire county. *Board of Dirs. v. Collier*, 104 Ark. 425, 149 S.W. 66 (1912).

Local improvement districts, although governmental agencies for some purposes, are not municipal corporations within the constitutional prohibition against issuance of interest-bearing evidences of indebtedness. *Nakdimen v. Ft. Smith & Van Buren Bridge Dist.*, 115 Ark. 194, 172 S.W. 272 (1914).

Municipal improvement district statutes providing assessments on realty for local improvements based upon consent of two-thirds in value of property holders in affected district is not abrogated by this section. *Ray v. City of Mt. Home*, 228 Ark. 885, 311 S.W.2d 163 (1958).

An improvement district is not a municipality and is not bound by the restrictions contained in this section requiring an election prior to the issuance of bonds; thus, sewer improvement districts are not bound by the provisions of this section. *Bell v. Fulkerson*, 291 Ark. 604, 727 S.W.2d 141 (1987).

Even if, under *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415

and 713 S.W.2d 230 (1986), bonds issued by a sewer improvement district were held to be under the restrictions of this section requiring an election prior to the issuance of bonds, bonds issued prior to that decision were not affected by it. *Bell v. Fulkerson*, 291 Ark. 604, 727 S.W.2d 141 (1987).

Interest.

County scrip issued since the adoption of the Constitution of 1874 cannot be made to bear interest by the treasurer's indorsement thereon "not paid for want of funds." *Jacks & Co. v. Turner*, 36 Ark. 89 (1880).

A board of improvement may contract to pay interest on a debt legally contracted and, when it does so, the interest becomes part of the cost of improvement. *Fitzgerald v. Walker*, 55 Ark. 148, 17 S.W. 702 (1891).

A city may contract with the grantee of a waterworks franchise that deferred payments of water rentals should bear interest if not paid when due. *Lackey v. Fayetteville Water Co.*, 80 Ark. 108, 96 S.W. 622 (1906).

The authorization of the county court to call in warrants for reissuance payable at a future date and to pay a fair sum for the value of the indulgence of the holders in waiting for payment violates the constitutional prohibition against counties issuing interest-bearing securities. *Quinn v. Reed*, 130 Ark. 116, 197 S.W. 15 (1917); *Gould v. Davis*, 133 Ark. 90, 202 S.W. 37 (1918).

An act denying further recovery of interest under a subsisting judgment on non-interest-bearing county warrants is valid. *Missouri & Ark. Lumber & Mining Co. v. Greenwood Dist.*, 249 U.S. 170, 39 S. Ct. 202, 63 L. Ed. 538 (1919).

A city cannot make a contract with its depository agreeing to pay a stipulated rate of interest on loans to the city. *Bourland v. First Nat'l Bank Bldg. Co.*, 152 Ark. 139, 237 S.W. 681 (1922).

—Notes.

The provision calling for the payment of interest on a note given by a municipal corporation for money borrowed for an authorized purpose is regarded as a surplusage, but the amount of the note itself may be recovered. *Forrest City v. Bank of Forrest City*, 116 Ark. 377, 172 S.W. 1148 (1915).

A city may issue warrants to complete construction begun by improvement district where the amount of bonds authorized was insufficient, but interest cannot be collected on such warrants. *Bank of Commerce v. Huddleston*, 172 Ark. 999, 291 S.W. 422 (1927).

County warrants issued to pay the interest on county debts evidenced by county warrants are void. *Harriman Nat'l Bank v. Pope County*, 173 Ark. 243, 292 S.W. 379 (1927).

Banks purchasing interest-bearing notes could not have been held bona fide purchasers having no notice that the contracts were not regular and had no infirmities when they clearly showed that they bore interest in violation of this section and that some of the contracts became due in 1960 in violation of Amendment No. 10. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

Lending Credit.

An act providing for the borrowing of money to cover deficiencies in the state's general revenue fund, and providing for the repayment of such money, is not an attempt to loan the state's credit. *Hays v. McDaniel*, 130 Ark. 52, 196 S.W. 934 (1917).

Statute authorizing cities and towns to purchase membership in local industrial development corporations was unconstitutional as authorizing municipal corporations to grant financial aid to such corporations. *Halbert v. Helena-West Helena Indus. Dev. Corp.*, 226 Ark. 620, 291 S.W.2d 802 (1956).

Arkansas Development Finance Corporation Act was not unconstitutional as amounting to the lending of the credit of the state. *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959).

Statute authorizing issuance and sale of state highway refunding bonds did not violate this section as the state was using its credit, not lending it. *Beaumont v. Faubus*, 239 Ark. 801, 394 S.W.2d 478 (1965).

Student Loan Authority bonds which will be repaid from income derived from the loan notes and investments, with interest payments coming from the federal government, and which clearly state on their face that they do not constitute an indebtedness or obligation of the State of Arkansas, can be issued without the ap-

proval of the electorate. *Turner v. Woodruff*, 286 Ark. 66, 689 S.W.2d 527 (1985).

It is enough to assure compliance with this section that the bonds state they do not pledge the credit of the state or the political subdivision which created the agency issuing the bonds. *Cortez v. Independence County*, 287 Ark. 279, 698 S.W.2d 291 (1985).

The leasing of a hospital by a municipal government to be operated by a nonprofit corporation was not a violation of this section where the hospital was not the arm of the city council and the city was not granting financial aid to the corporation either directly or indirectly. *Arkansas Uniform & Linen Supply Co. v. Institutional Servs. Corp.*, 287 Ark. 370, 700 S.W.2d 358 (1985).

City's agreement to unconditionally guarantee the obligations of another city and county was in violation of the constitution, was unauthorized, and was ultra vires. *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995).

Local Lease Agreements.

A tax exempt municipal lease agreement, authorized under § 14-76-101 (repealed), was held to contain interest bearing evidence of indebtedness in violation of this section. *Brown v. City of Stuttgart*, 312 Ark. 97, 847 S.W.2d 710 (1993).

Repeal of Amendment.

When Ark. Const. Amend. 62 repealed Ark. Const. Amend. 13, which amended this section, the intent was to repeal only what had been added by the amendment and not the original § 1 of this Article; in fact, Ark. Const. Amend. 62 contains substitute provisions by which the power of cities to issue tax-supported bonds for the making of capital improvements is preserved. *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986).

Revenue Bonds.

For cases discussing validity of revenue bonds decided prior to the decisions in *Purvis v. City of Little Rock* and following cases, and prior to enactment of Ark. Const. Amends. 62 and 65, see *McCutchen v. Siloam Springs*, 185 Ark. 846, 49 S.W.2d 1037 (1932); *Jernigan v. Harris*, 187 Ark. 705, 62 S.W.2d 5 (1933); *Snodgrass v. Pocahontas*, 189 Ark. 819, 75 S.W.2d 223 (1934); *Freeman v. Jones*, 189 Ark. 815, 75 S.W.2d 226 (1934); *Johnson v. Dermott*,

189 Ark. 830, 75 S.W.2d 243 (1934); *Kitchens v. Paragould*, 192 Ark. 271, 90 S.W.2d 761 (1936); *Robinson v. DeValls Bluff*, 197 Ark. 391, 122 S.W.2d 552 (1938); *City of Harrison v. Braswell*, 209 Ark. 1094, 194 S.W.2d 12 (1946); *Jacobs v. Sharp*, 211 Ark. 865, 202 S.W.2d 964 (1947); *Williams v. Harris*, 215 Ark. 928, 224 S.W.2d 9 (1949); *Austin v. Manning*, 217 Ark. 538, 231 S.W.2d 101 (1950); *Rowe v. Housing Auth.*, 220 Ark. 698, 249 S.W.2d 551 (1952); *Boswell v. City of Russellville*, 223 Ark. 284, 265 S.W.2d 533 (1954); *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960); *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962); *Miles v. Gordon*, 234 Ark. 525, 353 S.W.2d 157 (1962); *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981).

The Constitution does not authorize issuance of revenue bonds without approval of the majority of the electors. *Purvis v. City of Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984); *Cotton v. City of Fayetteville*, 284 Ark. 323, 682 S.W.2d 453 (1984); *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986); *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986) (preceding decisions prior to Const. Amend. 65).

The Constitution states that no city or county shall ever issue interest-bearing evidences of indebtedness without the consent of the electors; the mandate is binding and it includes transparent evasions by which a token commission or other body is created to sign the bonds while disclaiming any responsibility on the part of its creator. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) (decision prior to Const. Amend. 65).

Municipal bonds issued by a city were invalid where there was no approval by election. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) (decision prior to Const. Amend. 65).

The holding in *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) that the revenue bonds issued by the Hot Springs Advertising and Tourist

Promotion Commission were invalid for lack of approval of the electors did not invalidate revenue bonds issued prior to March 3, 1986, in reliance on the court's earlier decisions. *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986) (decision prior to Const. Amend. 65).

School Districts.

School districts may issue interest-bearing evidences of indebtedness. *Schmutz v. Special School Dist.*, 78 Ark. 118, 95 S.W. 418 (1906).

A school district is not a municipality within this section providing that no county, city, or municipality shall issue any interest-bearing evidences of indebtedness. *A.H. Andrews Co. v. Delight Special Sch. Dist.*, 95 Ark. 26, 128 S.W. 361 (1910).

An insurance contract between the insurance company and the school district, whereby half the premium was to be paid and the other half to be assessed if necessary, does not make the district a stockholder in the company and is not the lending of the credit of the district to a corporation. *Clifton v. School Dist. No. 14*, 192 Ark. 140, 90 S.W.2d 508 (1936).

Statute which provides for the transfer of school funds for the benefit of students who attended a school which was closed to another school which they may later attend does not involve the lending of state credit nor the use of funds for purposes other than that for which collected in violation of this section. *Fitzhugh v. Ford*, 230 Ark. 531, 323 S.W.2d 559 (1959).

State.

The state itself is not prohibited by the Constitution from issuing interest-bearing evidences of indebtedness. *Hays v. McDaniel*, 130 Ark. 52, 196 S.W. 934 (1917); *Bush v. Martineau*, 174 Ark. 214, 295 S.W. 9 (1927); *Connor v. Blackwood*, 176 Ark. 139, 2 S.W.2d 44 (1928); *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Cited: *Western Foods, Inc. v. Weiss*, 338 Ark. 140, 992 S.W.2d 100 (1999).

§ 2. Debts of state — Payment.

The General Assembly shall, from time to time, provide for the payment of all just and legal debts of the State.

RESEARCH REFERENCES

Ark. L. Notes. Smolla, Politics and Due Process Don't Mix: Should the State Claims Commission Be Abolished?, 1986 Ark. L. Notes. 43.

UALR L.J. State Court Sovereign Immunity: Just When is the Emperor Armor-Clad?, 24 UALR L.J. 255.

CASE NOTES

Cited: *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

§ 3. Making profit out of or misusing public funds — Penalty.

The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any officer of the State, or member or officer of the General Assembly, shall be punishable as may be provided by law, but part of such punishment shall be disqualification to hold office in this State for a period of five years.

CASE NOTES

Enforcement.

The chancery court has jurisdiction of suits to prevent illegal exactions and such court does not lose jurisdiction where a member of the General Assembly illegally holding state civil office during the term

for which he was elected to the General Assembly elects to perform the duties of state civil office without pay for services or reimbursement for expenses incurred. *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963).

§ 4. Salaries and fees of state officers.

The General Assembly shall fix the salaries and fees of all officers in the State; and no greater salary or fee than that fixed by law shall be paid to any officer, employee or other person, or at any rate other than par value; and the number and salaries of the clerks and employees of the different departments of the State shall be fixed by law.

CASE NOTES

ANALYSIS

Authority of judges.
Classification by population.
Legislative power.
Salaries greater than appropriation.

Authority of Judges.

Judges do not have the authority to set salaries of court personnel, unless that authority has been properly delegated to them by the legislative branch. *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

Classification by Population.

Statute fixing compensation of county

judge was not local and special because of alleged improper classification of counties when compared with other counties on a basis of population and assessed valuation; authority to pass such legislation was specifically granted by the Constitution. *Lawhorn v. Johnson*, 196 Ark. 991, 120 S.W.2d 720 (1938).

Statute fixing the salaries of the tax collectors in each of 16 counties in the state where the office is separated from the sheriff's office is not a special or local law violating the Constitution because it does not apply to all counties in the state but is general, as the classification contained therein is not an arbitrary but a

reasonable one. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

Statute purporting to fix the salary of the assessor in Independence County is special and invalid in that it purports to create a classification of counties with a population between 23,400 and 23,600. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

Legislative Power.

The power to fix the salaries and fees of all officers in the state and the number of their clerks and employees and their salaries is a function lodged exclusively with the legislature. *Director of Bureau of Legislative Research v. Mackrell*, 212 Ark. 40, 204 S.W.2d 893 (1947).

State Hospital Board did not have authority to establish positions or offices or

to designate salaries different from that provided by the legislature. *Gipson v. Crawfis*, 225 Ark. 903, 286 S.W.2d 336 (1956).

Salaries Greater Than Appropriation.

Practice of state institutions and state agencies in paying employees money out of cash fund so that employees receive a greater salary than appropriated by the state legislature is illegal, and taxpayer is entitled to an injunction against such practices. *Gipson v. Ingram*, 215 Ark. 812, 223 S.W.2d 595 (1949).

Cited: *Cain v. Woodruff County*, 89 Ark. 456, 117 S.W. 768 (1909); *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978); *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

§ 5. Property taxed according to value — Procedures for valuation — Tax exemptions.

(a) All real and tangible personal property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property for which a tax may be collected shall be taxed higher than another species of property of equal value, except as provided and authorized in Section 15 of this Article, and except as authorized in Section 14 of this Article. The General Assembly, upon the approval thereof by a vote of not less than three-fourths ($\frac{3}{4}$ ths) of the members elected to each house, may establish the methods and procedures for valuation of property for taxation purposes, but may not alter the method of valuation set forth in Section 15 of this Article.

(b) The following property shall be exempt from taxation: public property used exclusively for public purposes; churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes; and buildings and grounds and materials used exclusively for public charity.

Nothing in this Section shall affect or repeal the provision of Amendment 57 to the Constitution of the State of Arkansas pertaining to intangible personal property. [Added by Const. Amend. 59.]

Publisher's Notes. Section 17 of Ark. Const. Amend. 59 repealed former Art. 16, § 5 and substituted the present section therefor.

The provisions of this section relating to the assessment and taxation of tangible personal property are superseded by Ark. Const. Amend. 71.

Cross References. Homestead exemption, Ark. Const. Amend. 22.

New manufacturing establishments, exemption, Ark. Const. Amend. 27.

Textile mills exempt, Ark. Const. Amend. 12.

RESEARCH REFERENCES

ALR. Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 ALR 4th 428.

Recovery of tax paid on exempt property. 25 ALR 4th 186.

Requirement of full-value real property taxation assessments. 42 ALR 4th 676.

Ark. L. Notes. Malone, Farmland Preservation, 1985 Ark. L. Notes 73.

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

Acquisition of Public Recreational Access to Privately Owned Property: Devices, Problems, and Incentives, 29 Ark. L. Rev. 514.

CASE NOTES

Note. Most of the following cases were decided under the former section prior to its repeal and replacement by Const., Amend. 59.

ANALYSIS

In general.

Construction.

Applicability.

Adjacent property.

Assessment for improvements.

—School property.

Corporate stock.

Depreciation.

Equality and uniformity.

—Classification.

—Equalization.

—Reassessment.

—State court review.

—Value.

Exemptions.

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—Churches.

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—Hospitals.

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—Lodges.

—Public property.

—Drainage districts.

—Housing authority.

—Justice Building Commission.

—Parks.

—Water works.

—Public purpose.

—Schools.

Fines and costs.

Illegal exaction.

Income taxes.

Industrial development programs.

Inheritance taxes.

Motor vehicle fees.

—Certificate of title.

—License fee.

Privilege taxes.

Property.

Recovery of illegal exactions.

Rice milling tax.

Timber after severance.

Transfer tax.

Use tax.

In General.

All property not exempt by the Constitution and state laws is subject to state taxation. *Burbridge v. Smyrna Baptist Church*, 212 Ark. 924, 209 S.W.2d 685 (1948).

The ad valorem property taxes assessed were authorized by law. *Pockrus v. Bella Vista Village Property Owners Ass'n*, 316 Ark. 468, 872 S.W.2d 416 (1994).

Construction.

This section is not so broad that it gives one taxpayer the right to intervene in the merits of a criminal case against another person. *Franz v. State*, 296 Ark. 181, 754 S.W.2d 839 (1988), overruled in part on other grounds, *State v. Robbins*, 342 Ark. 262, 27 S.W.3d 419 (2000).

As used in this section, "value" means true market value, and property should be so assessed to insure uniformity of taxation; statutory methods enacted by the legislature which provide for valuation only on the basis of "current use," and not true market value, are unconstitutional. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Applicability.

This section does not apply to the collection by a tax collector of a grass-cutting lien for a city pursuant to § 14-54-904. *Tucker v. Holt*, 343 Ark. 216, 33 S.W.3d 110 (2000).

Adjacent Property.

The parking lot, connecting driveways,

and landscaped areas surrounding a tax exempt church building were also held to be exempt. *Phillips v. Mission Fellowship Baptist Church*, 59 Ark. App. 242, 955 S.W.2d 917 (1997).

Physician's office building and parking lot adjacent to a public hospital was not exempt from ad valorem taxation; although the building and parking lot were public property, they were not used exclusively for public purposes. *Crittenden Hosp. Ass'n v. Board of Equalization*, 330 Ark. 767, 958 S.W.2d 512 (1997).

Assessment for Improvements.

A law which levies an assessment for a local benefit upon part of the lands to be benefited to the exclusion of others of the same class is void. *Davis v. Gaines*, 48 Ark. 370, 3 S.W. 184 (1886); *Martin v. Reynolds*, 125 Ark. 163, 188 S.W. 4 (1916).

The provisions of the Constitution in regard to taxation do not apply to assessments for public improvements levied by the General Assembly or authorized by it. *Caton v. Western Clay Drainage Dist.*, 87 Ark. 8, 112 S.W. 145 (1908); *Bensberg v. Parker*, 192 Ark. 908, 95 S.W.2d 892 (1936).

—School Property.

Assessments for improvement benefits are not taxes in the usual and ordinary sense of the word and, therefore, an act making school property subject to assessments for local improvements beneficial thereto does not conflict with this section. *Rainwater v. Haynes*, 244 Ark. 1191, 428 S.W.2d 254 (1968).

Corporate Stock.

That part of the capital stock of a bank invested in real estate should be deducted from the capital stock in assessing the latter, otherwise double taxation would result. *Hempstead County v. Hempstead County Bank*, 73 Ark. 515, 84 S.W. 715 (1905).

Since stock in a corporation is not exempt from taxation, the corporation is required to list it for taxation; therefore, a resident owner of shares of stock in a domestic insurance company is not required to list such stock for taxation. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908).

A corporation is not required to assess and pay taxes on shares of stock purchased by it in other corporations which

are required to assess and pay taxes on their own stock or property, but it is required to assess and pay taxes on its own capital stock or property. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Depreciation.

The assessor's decision to value computers by the cost-less-depreciation method over six years, rather than to use the fair market value evidenced by various trade magazines, was not clearly erroneous or arbitrary or confiscatory. *IBM Credit Corp. v. Pulaski County*, 316 Ark. 580, 873 S.W.2d 161 (1994).

Equality and Uniformity.

There must be equality of burden. This uniformity must be co-extensive with the territory to which the tax applies, whether it be the state, a county, township, city, town, or district. *Washington v. State*, 13 Ark. 752 (1853); *McGehee v. Mathis*, 21 Ark. 40 (1860); *Fletcher v. Oliver*, 25 Ark. 289 (1868) (preceding decisions under prior Constitution).

Uniformity must be observed in levying taxes for support of two judicial districts in a county. *Hutchinson v. Ozark Land Co.*, 57 Ark. 554, 22 S.W. 173 (1893); *Cotham v. Coffman*, 111 Ark. 108, 163 S.W. 1183 (1914); *Woolard v. Thomas*, 238 Ark. 162, 381 S.W.2d 453 (1964).

An act fixing the valuation of property in a certain school district for school purposes at a given percent, and at another percent for general taxation, is void, as there must be uniformity both as to rate and the mode of assessment. *Hays v. Missouri Pac. R.R.*, 159 Ark. 101, 250 S.W. 879 (1923).

Taxpayer was not entitled to complain that assessment lacked uniformity because fractional interests in mineral rights were not assessed where descriptive lists promised by him to the assessor were withheld until a time apparently sufficient to prevent taxation for current year. *Stout Lumber Co. v. Parker*, 197 Ark. 65, 122 S.W.2d 180 (1938).

A provision of the gasoline tax law that the tax on fuels purchased outside the state and used in the state shall be determined on the basis of five miles per gallon of distillate fuel, as applied to interstate bus companies that actually obtain 6.3 miles per gallon, is arbitrary, unreasonable

able, discriminatory and violative of this section. *Larey v. Continental S. Lines*, 243 Ark. 278, 419 S.W.2d 610 (1967).

The overall intent of Ark. Const. Amend. 59 was to equalize the assessments and millage rates with respect to personal and real property taxes after completion of reappraisal. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

The mandate of equality and uniformity of taxation does not apply only within county lines; the provision clearly refers to statewide equality and uniformity. *Summers Chevrolet, Inc. v. Yell County*, 310 Ark. 1, 832 S.W.2d 486 (1992).

A taxpayer has the right to compel a reduction in his assessment as would afford equality and uniformity with assessments of other like property in other counties of the state. *Summers Chevrolet, Inc. v. Yell County*, 310 Ark. 1, 832 S.W.2d 486 (1992).

—Classification.

Nothing in this section denies the legislature the power to classify property for the purpose of taxation. *Saint Louis, I.M. & S. Ry. v. Worthen*, 52 Ark. 529, 13 S.W. 254 (1889).

The power to classify makes it competent for the legislature to provide the periods for the assessment of each class, as well as the mode. One kind of property may be assessed every year and another only once in two years. *Saint Louis, I.M. & S. Ry. v. Worthen*, 52 Ark. 529, 13 S.W. 254 (1889).

The state is allowed a wide discretion in the matter of classifying property for the purpose of taxation. *State ex rel. Moose v. Kansas City & M. Ry. & Bridge Co.*, 117 Ark. 606, 174 S.W. 248 (1914).

In the levying and collection of property taxes classification is permissible only when it does not run counter to the fundamental requirement of equality. *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

Acts 1995, No. 438, now codified at § 14-356-101 to 102, is an unconstitutional per se determination by the General Assembly that certain property is used exclusively for public purposes and therefore exempt from taxes; such determination is a judicial function performed only after appropriate fact-finding by the

court. *City of N. Little Rock v. Pulaski County*, 332 Ark. 578, 968 S.W.2d 582 (1998).

—Equalization.

It is within the power of the county court to reduce an assessment of property which was assessed at its full market value when the assessor and board of equalization valued all other property in the county at one-half its market value. *Ex parte Ft. Smith & Van Buren Bridge Co.*, 62 Ark. 461, 36 S.W. 1060 (1896).

The entire proceedings for valuation are statutory, and the statutory remedies provided to a party aggrieved by an overvaluation made within the jurisdiction of the particular officer or board must be pursued. *Clay County v. Brown Lumber Co.*, 90 Ark. 413, 119 S.W. 251 (1909); *State v. Little*, 94 Ark. 217, 126 S.W. 713 (1910).

The citizens of one county are entitled to compel such reduction in assessment as would afford equality and uniformity with assessments of property in other counties in the state. *State ex rel. Nelson v. Meek*, 127 Ark. 349, 192 S.W. 202 (1917).

In action involving the ad valorem assessment of real property, where assessor, after making up his assessment books and an abstract of the assessed property, filed claim with the county clerk, who made out his report in accordance with the assessor's abstract, forwarding same to the State Tax Coordination Division, during which time the county board of equalization was in session, the action of the quorum court directing taxes to be collected from the value established by the assessor was void since it was without authority to levy millages on any basis other than the assessment of the assessor as it was equalized and adjusted by the equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958).

Constitutional Amend. 59 requires that personal property be exempted from new levies until such time as the rates on personal property and real property are equalized. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

—Reassessment.

A reassessment of corporate property for back taxes should be made on the same basis as the original inadequate assessment. *White River Lumber Co. v. State*, 175 Ark. 956, 2 S.W.2d 25 (1928), *aff'd*,

279 U.S. 692, 49 S. Ct. 457, 73 L. Ed. 903 (1929).

A 1979 county reassessment, although not based on current market value of real property, was an act taken to achieve a more proper level of taxation and, as such, was neither illegal nor contrary to the decision in *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979), which allowed the Public Service Commission until the end of 1979 to prepare an implementation plan and provided that statewide reassessments would begin in January, 1981. *Rodgers v. Easterling*, 270 Ark. 255, 603 S.W.2d 884 (1980).

—State Court Review.

State courts can only review real property assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Tuthill v. Arkansas County Equalization Bd.*, 303 Ark. 387, 797 S.W.2d 439 (1990).

The burden of proof is on the protestant to show that a real property assessment is manifestly excessive or clearly erroneous or confiscatory. *Tuthill v. Arkansas County Equalization Bd.*, 303 Ark. 387, 797 S.W.2d 439 (1990).

—Value.

The legislature may provide for the collection of taxes due the state from corporations because of undervaluation of their property. *State ex rel. Moose v. Kansas City & M. Ry. & Bridge Co.*, 117 Ark. 606, 174 S.W. 248 (1914).

The board in making a valuation must consider the advantages or disadvantages of location, the quality of soil, the quantity and quality of standing timber, as well as other elements which enter into and constitute the value of the land. *Drew County Timber Co. v. Board of Equalization*, 124 Ark. 569, 187 S.W. 942 (1916).

The legislature can fix any basis of valuation that may be found fair or necessary provided the element of uniformity is preserved throughout the state. *State ex rel. Nelson v. Meek*, 127 Ark. 349, 192 S.W. 202 (1917); *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1959); *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

The office of tax assessor must form a

part of any valuation scheme erected by the legislature, but the legislature may from time to time prescribe the duties of that office and adopt such methods as may be deemed expedient to ascertain the values of taxable property. *Hutton v. King*, 134 Ark. 463, 205 S.W. 296 (1918).

"Value" has been interpreted as meaning current market value. *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979) (decision prior to Const. Amend. 59).

Act which froze land values as of certain past years for certain classes of property was unconstitutional as in violation of provision for assessment at current market value. *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979) (decision prior to Const. Amend. 59).

An act which mandated that agricultural property be valued on the basis of present use rather than market value violated the constitutional provision that property shall be taxed according to its value, "making the same equal and uniform throughout the State." *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979) (decision prior to Const. Amend. 59).

When income-producing property is assessed and the new cost approach is exclusively used without any consideration of the cost of acquisition or of the value of the property in terms of the income that property will generate for the owner, then the appraisal is not aimed at determining the property's true market value. *Jim Paws, Inc. v. Equalization Bd.*, 289 Ark. 113, 710 S.W.2d 197 (1986).

Exemptions.

Exemptions, no matter how meritorious, are acts of grace and must be strictly construed, and every reasonable intentment must be made that it was not the design to surrender the power of taxation or to exempt any property from its due proportion of the burden of taxation. *Hilger v. Harding College, Inc.*, 231 Ark. 686, 331 S.W.2d 851 (1960); *Sebastian County v. Educare Ctrs. of Ark., Inc.*, 296 Ark. 538, 758 S.W.2d 413 (1988).

The fact that some patients pay for services does not destroy the constitutional exemption. *Sebastian County*

Equalization Bd. v. Western Ark. Counseling & Guidance Ctr., Inc., 296 Ark. 207, 752 S.W.2d 755 (1988).

Because of the similarity of the language employed in subsection (b) that exempts property used for school, public, and charitable purposes, the principles and rules applying to one category will apply with force to the other categories. Sebastian County v. Educare Ctrs. of Ark., Inc., 296 Ark. 538, 758 S.W.2d 413 (1988).

—Arts Center.

Where, on the tax assessment date, construction of an arts center was proposed, some preparation work had begun but new construction had not commenced, the intended use of the land was generally of a public nature but there had been no actual or exclusive public use as mandated by the Constitution and an intended exclusive public use had not been substantiated, a tax exemption was not allowed. City of Fayetteville v. Phillips, 306 Ark. 87, 811 S.W.2d 308 (1991).

The Walton Arts Center, public property jointly owned by the City of Fayetteville and the Board of Trustees of the University of Arkansas, is not exempt from ad valorem taxation under subsection (b) of this section because it is not used exclusively for public purposes. City of Fayetteville v. Phillips, 320 Ark. 540, 899 S.W.2d 57 (1995).

—Cemeteries.

Since land used as a cemetery is exempt from taxation, one purchasing such land at a tax sale acquired no title. Winn v. City of Little Rock, 165 Ark. 11, 262 S.W. 988 (1924).

Land used exclusively for cemeteries is exempt from taxation. Ponder v. Richardson, 213 Ark. 238, 210 S.W.2d 316 (1948).

—Charitable Purposes.

The fact that the rents and revenues of certain real estate are devoted to purposes of public charity will not exempt such property from taxation; it is only when the property is actually and directly used for charitable purposes that his exemption applies. Brodie v. Fitzgerald, 57 Ark. 445, 22 S.W. 29 (1893).

The fact that the rents and revenues of a property owned by a charitable corporation are devoted to the purposes for which the corporation was organized will not exempt such property from taxation. It is

only when the property itself is actually and directly used for charitable purposes that the law exempts it from taxation. Hilger v. Harding College, Inc., 231 Ark. 686, 331 S.W.2d 851 (1960).

Where part of appellee's property for which rents were collected was not being directly and exclusively used for public charity, it was properly subjected to taxation as the exemption was based upon the actual use of property rather than the use of its revenues. Burgess v. Four States Mem. Hosp., 250 Ark. 485, 465 S.W.2d 693 (1971).

In order to qualify for the exemption under the constitution, an entity must show that it is a charitable organization and that the property claimed for exemption is used exclusively for charitable purposes. Sebastian County Equalization Bd. v. Western Ark. Counseling & Guidance Ctr., Inc., 296 Ark. 207, 752 S.W.2d 755 (1988).

Property upon which was located an unprofitable apartment complex occupied by persons aged 55 and older did not qualify as a building used exclusively for public charity where there was no evidence that any charitable activity was occurring there, or that the fees paid by residents were devoted to charitable purposes. Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998).

—Churches.

When the church building stands on only one of two lots owned by the church, the vacant lot is subject to taxation. Pulaski County v. First Baptist Church, 86 Ark. 205, 110 S.W. 1034 (1908).

Ownership is not a condition for tax-exempt status for churches; use is determinative of entitlement to a tax exemption. Phillips v. Mission Fellowship Baptist Church, 59 Ark. App. 242, 955 S.W.2d 917 (1997).

—Classification.

If the primary use is one allowed under the exemption, a secondary or incidental use, even if for a purpose not within the exemption, is irrelevant. Arkansas Conference Ass'n of Seventh Day Adventist, Inc. v. Benton County Bd. of Equalization, 304 Ark. 95, 800 S.W.2d 426 (1990).

—Hospitals.

A hospital operated as a charity is not excluded from the exemption merely be-

cause patients who are able to do so are required to pay, so long as the money received is devoted altogether to the charitable object for which the institution was founded. *Hot Springs School Dist. v. Sisters of Mercy*, 84 Ark. 497, 106 S.W. 954 (1907).

The mere fact that members of a trust which formerly owned the hospital used the hospital along with other members of the general public and on the same basis would not necessarily change its charitable purposes so long as receipts from any source are held in trust for the furtherance of charitable purposes. *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

—Improvement Districts.

Although the constitutional exemption provided in this section is stated to be from ad valorem taxation, the same public purpose exemption extends to improvement district assessments unless a statute provides otherwise. *Off-Street Parking Dev. Dist. No. 1 v. City of Fayetteville*, 284 Ark. 453, 683 S.W.2d 229 (1985).

Property acquired and held by an improvement district as the result of foreclosure for failure to pay improvement district assessments is not subject to taxation. *Pulaski County v. Carriage Creek Property Owners Imp. Dist. No. 639*, 319 Ark. 12, 888 S.W.2d 652 (1994).

—Lodges.

The personal property of a Masonic lodge is not exempt unless "used exclusively for public charity." *Grand Lodge of Free & Accepted Masons v. Taylor*, 146 Ark. 316, 226 S.W. 129 (1920).

—Public Property.

Lands used by a city for storing wood with which to run the engines of its water and light plants, and land used exclusively as a public park for track meets and for keeping the city's work stock, are exempt from taxation. *Hope v. Dodson*, 166 Ark. 236, 266 S.W. 68 (1924).

Though the use of a dumping ground purchased by the city for that purpose has, because of bad roads leading to it, been discontinued, it is exempt from taxation. *Hudgins v. City of Hot Springs*, 168 Ark. 467, 270 S.W. 594 (1925).

Property received from the United States by gift, the proceeds from the sale of which was to be used by the National

Guard, is exempt from the auction tax. *Adkins v. Kalter*, 171 Ark. 1111, 287 S.W. 388 (1926).

For property to be exempted from taxation, two elements must be present: (a) the property must be "public property," that is, it must be owned by the municipality; and (b) it must be used exclusively for public purposes. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960).

Construction or reconstruction of a district court house or jail is a matter of county-wide interest and responsibility, and a tax levied for such a purpose is a tax levy for a county purpose. *Woolard v. Thomas*, 238 Ark. 162, 381 S.W.2d 453 (1964).

Before the city can successfully claim exemption from taxation, the property must have been used for a public purpose; contemplated future use is not sufficient. *City of Springdale v. Duncan*, 240 Ark. 716, 401 S.W.2d 747 (1966).

Where private corporations operated their businesses on property leased from a city, the land was not being used exclusively for public purposes and thus was not exempt from ad valorem taxation. *B.D.T., Inc. v. Moore*, 260 Ark. 581, 543 S.W.2d 220 (1976).

—Drainage Districts.

Lands in possession of drainage district in its governmental capacity are not subject to assessment for taxes, and purported forfeiture and sale for taxes was void. *Ridgeway v. Lewis*, 203 Ark. 1063, 160 S.W.2d 50 (1942).

—Housing Authority.

Statutory provision exempting property used by housing authority in the accomplishment of slum clearing projects from all taxes was not unconstitutional since housing authority is a public agency and its property is public property devoted to a charitable use. *Hogue v. Housing Auth.*, 201 Ark. 263, 144 S.W.2d 49 (1940).

—Justice Building Commission.

Provision exempting bonds of Arkansas Justice Building Commission from all state, county, and municipal taxes was invalid insofar as it related to property taxation. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

—Parks.

Public parks maintained at the public expense are within the terms of this con-

stitutional provision. *Yoes v. City of Ft. Smith*, 207 Ark. 694, 182 S.W.2d 683 (1944).

—Water Works.

Sale of water by one city to another, to an improvement district, or to an army camp does not deprive the city of its right to tax exemption of its property in adjoining county. *Yoes v. City of Ft. Smith*, 207 Ark. 694, 182 S.W.2d 683 (1944).

A swimming pool, bathhouse, concessions, and cottages below city's water supply dam in adjoining county, in the nature of a public park and maintained for public purposes, were held not to destroy the status of the water works as tax exempt property. *Yoes v. City of Ft. Smith*, 207 Ark. 694, 182 S.W.2d 683 (1944).

—Public Purpose.

Phrase "public purpose" is not an exact term, susceptible of a static definition, but has various shades depending on whether the context is eminent domain, revenue bonds, lending the credit of a political subdivision, or tax exemption under this section. *Holiday Island Sub. Imp. Dist. #1 v. Williams*, 295 Ark. 442, 749 S.W.2d 314 (1988).

Finding that facilities were not used exclusively for public purposes was not clearly against the preponderance of the evidence in view of the proof that signs were prominently displayed declaring "Property Owners Only" and "Members and Guests Only." *Holiday Island Sub. Imp. Dist. #1 v. Williams*, 295 Ark. 442, 749 S.W.2d 314 (1988).

A tax exemption for public property under construction may not be summarily denied based on the taxing authority's belief that the property might be used for a nonpublic purpose when completed. *City of Fayetteville v. Phillips*, 306 Ark. 87, 811 S.W.2d 308 (1991).

The test for exemption under subsection (b) is (1) whether the property is public property, and (2) whether it is being used exclusively for public purposes. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

Even when proceeds received from public property rented for private purposes are used for public purposes, the land is taxable as the actual use must be public. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

—Schools.

The exemption as to school buildings applies to private schools as well as public schools. *Phillips County v. Sister Estelle*, 42 Ark. 536 (1884).

Property held by a school district solely for sale or rent is not exempt. *School Dist. v. Howe*, 62 Ark. 481, 37 S.W. 717 (1896).

Where lots exclusively used for school purposes were assessed and sold for non-payment of taxes, such assessment and sale were erroneous and the purchaser acquired no title at the tax sale. *Leavy v. Ward*, 208 Ark. 235, 185 S.W.2d 708 (1945); *Foresee v. Board of Dirs.*, 213 Ark. 569, 211 S.W.2d 432 (1948).

Lot deeded to a school district for school purposes is exempt from taxation so long as there is not an abandonment and there is a bona fide intention of using it for school purposes. *Foresee v. Board of Dirs.*, 213 Ark. 569, 211 S.W.2d 432 (1948).

Where 10% of the work of a college printing press was not done for the college, the press was not used exclusively for "school purposes" and was not exempt from taxation. *Hilger v. Harding College, Inc.*, 231 Ark. 686, 331 S.W.2d 851 (1960).

Any school must operate its institution and use its property directly and exclusively for school purposes and with no view to profit before the school or its property is entitled to an exemption. *Sebastian County v. Educare Ctrs. of Ark., Inc.*, 296 Ark. 538, 758 S.W.2d 413 (1988).

Where center offered strong evidence and forceful argument that it qualified as a school, not a child care facility, as the term "school" is intended under subsection (b), but the center was established and operated to make a profit, the trial court's decision finding the center exempt from taxes under subsection (b) was erroneous. *Sebastian County v. Educare Ctrs. of Ark., Inc.*, 296 Ark. 538, 758 S.W.2d 413 (1988).

Where single family dwellings located on boarding school grounds were rented for residential use to faculty and staff of school, the dwellings were not used exclusively for "school purposes" and were not exempt from taxation although the residents did conduct some school-related activities in the dwellings. *Arkansas Conference Ass'n of Seventh Day Adventist, Inc. v. Benton County Bd. of Equalization*, 304 Ark. 95, 800 S.W.2d 426 (1990).

Fines and Costs.

A tax imposed on each criminal convic-

tion and included in the judgment is a fee to the public and not an ad valorem tax within the meaning of the Constitution. *Lee County v. Abrahams*, 34 Ark. 166 (1879); *Murphy v. State*, 38 Ark. 541 (1882).

Illegal Exaction.

A case concerning a school district's failure to roll back taxes under this section constituted an illegal exaction, not an improper collection and assessment of county taxes. *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

Income Taxes.

Tax on incomes levied uniformly against all citizens could extend to lessee of personalty on federal reservation since state income tax, although classified as an excise, is treated by the courts as having many of the characteristics of a property tax, and an excise is not within the constitutional provision limiting the rate of taxes on property and providing for uniformity. *Superior Bath House Co. v. McCarroll*, 200 Ark. 233, 139 S.W.2d 378 (1940), *aff'd*, 312 U.S. 177, 61 S. Ct. 503, 85 L. Ed. 721 (1941), overruled on other grounds, *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323 (1980).

Industrial Development Programs.

In the context of an Act 9 industrial development program, as codified at Ark. Code Ann. §§ 14-164-201 et seq., maturity and payment of bonds does not independently trigger the end of the public purpose and the end of the exemption from ad valorem taxes. *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998).

Inheritance Taxes.

Inheritance taxes are not laid upon property, but upon the privilege or right to succession, and are not subject to the same tests as to quality and uniformity as taxes levied upon property. *State v. Handlin*, 100 Ark. 175, 139 S.W. 1112 (1911).

Motor Vehicle Fees.

—Certificate of Title.

Since the charge of one dollar for motor vehicle certificates of title in the State Revenue Department Building Fund is a "fee" rather than a "tax," it does not violate

the constitutional requirement for equality and uniformity of taxation. *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962).

—License Fee.

The license fee for a tag to be placed on a motor vehicle is not a tax upon property but is a tax upon a privilege and may be assessed upon county vehicles. *Blackwood v. Sibeck*, 180 Ark. 815, 23 S.W.2d 259 (1930).

Privilege Taxes.

The requirements of equality and uniformity and that property be taxed according to value do not apply to privilege taxes. *City of Ft. Smith v. Scruggs*, 70 Ark. 549, 69 S.W. 679 (1902).

Property.

The term "property" means the property itself and not the annual gain or revenue from it. *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929).

Because the returns of after-tax contributions to a retirement plan were property, pursuant to this section, and not income, the Arkansas Department of Finance and Administration's attempted tax of the returns under § 26-51-307 was unconstitutional given the prohibition in Ark. Const. Amend. 47 that prohibited an ad valorem tax being levied on property; thus, the trial court properly granted partial summary judgment in favor of the taxpayers. *Weiss v. McFadden*, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 378 (June 26, 2003).

Recovery of Illegal Exactions.

There can be no recovery of voluntarily paid taxes, except where a recovery is authorized by a statute without regard to whether the payment is voluntary or compulsory; this is true even when an illegal exaction claim is based on constitutional grounds. *Mertz v. Pappas*, 320 Ark. 368, 896 S.W.2d 593 (1995).

Rice Milling Tax.

Tax on all rice milled in Arkansas was held unconstitutional as being laid on a common right and not for a public purpose. *Stuttgart Rice Mill Co. v. Crandall*, 203 Ark. 281, 157 S.W.2d 205 (1941).

Timber After Severance.

After severance from the land by the execution of a timber deed, growing trees

become property subject to taxation. *Southern Lumber Co. v. Arkansas Lumber Co.*, 176 Ark. 906, 4 S.W.2d 928 (1928).

Transfer Tax.

This section does not apply to an excise tax levied upon real estate transfers as such a tax is not a property tax within the meaning of this section. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

Use Tax.

Use tax is not a tax on property, hence, it does not violate this section requiring all property taxes to be equal and uniform. *Morley v. E.E. Barber Constr. Co.*, 220 Ark. 485, 248 S.W.2d 689 (1952).

Cited: *Pike v. State*, 5 Ark. 204 (1843); *Peay v. Little Rock*, 32 Ark. 31 (1877); *Town of Monticello v. Banks*, 48 Ark. 251, 2 S.W. 852 (1886); *Board of Imp. v. School Dist.*, 56 Ark. 354, 19 S.W. 969 (1892); *White River Lumber Co. v. Elliott*, 146 Ark. 551, 226 S.W. 164 (1920); *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980); *Wells v. Arkansas Pub.*

Serv. Comm'n, 272 Ark. 481, 616 S.W.2d 718 (1981); *Ketcher v. Mayor of N. Little Rock*, 2 Ark. App. 315, 621 S.W.2d 12 (1981); *Arkansas Emp. Sec. Div. v. National Baptist Convention U.S.A., Inc.*, 275 Ark. 374, 630 S.W.2d 31 (1982); *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983); *Taylor v. Finch*, 288 Ark. 50, 701 S.W.2d 377 (1986); *ABF Freight Sys. v. Tax Div.*, 787 F.2d 292 (8th Cir. 1986); *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986); *Liggett v. Church of Nazarene*, 291 Ark. 298, 724 S.W.2d 170 (1987); *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990); *Agape Church, Inc. v. Pulaski County*, 307 Ark. 420, 821 S.W.2d 21 (1991); *Young v. Jamison*, 309 Ark. 187, 828 S.W.2d 831 (1992); *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992); *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317, *supp. op.*, 313 Ark. 499-A (1993).

§ 6. Other tax exemptions forbidden.

All laws exempting property from taxation, other than as provided in this Constitution shall be void.

RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

CASE NOTES

ANALYSIS

In general.

Corporations.

Housing authority.

Industrial development compacts.

Industrial development corporations.

Insurance companies.

Justice Building Commission.

Public property.

Railroad property.

School purposes.

Time of assessment and taxation.

Transfer tax.

In General.

This section is a limitation upon the power of the legislature to exempt property from taxation. *Brodie v. Fitzgerald*, 57 Ark. 445, 22 S.W. 29 (1893).

Property may not become exempt by operation of law unless it is exempted by the Constitution. *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931).

For property to be exempted from taxation two elements must be present: (a) the property must be "public property," that is, it must be owned by the municipality; and (b) it must be used exclusively for public purposes. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960).

Corporations.

An act permitting a corporation to be assessed as a "unit profit producing plant" was not violative of this section even though the aggregate value of the company's property might exceed such value. *Wells, Fargo & Co. Express v. Crawford*

County, 63 Ark. 576, 40 S.W. 710, 37 L.R.A. 371 (1897).

Housing Authority.

Statutory provision exempting property used by housing authority in the accomplishment of slum clearing projects from all taxes was not unconstitutional since housing authority is a public agency and its property is public property devoted to a charitable use. *Hogue v. Housing Auth.*, 201 Ark. 263, 144 S.W.2d 49 (1940).

Industrial Development Compacts.

There was no merit to the contention that law which dealt with industrial development compacts violated this amendment. *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961).

Industrial Development Corporations.

Exempting bonds of corporations organized under Arkansas Industrial Development Act from taxation was unconstitutional under this section. *Halbert v. Helena-West Helena Indus. Dev. Corp.*, 226 Ark. 620, 291 S.W.2d 802 (1956).

Insurance Companies.

A tax based upon net receipts of all insurance companies in lieu of all other taxes was not void as conferring an exemption in violation of this section. *State ex rel. Norwood v. New York Life Ins. Co.*, 119 Ark. 314, 171 S.W. 871 (1914).

Justice Building Commission.

Provision of law exempting bonds of Arkansas Justice Building Commission from all state, county, and municipal taxes, including income taxation and inheritance taxation, was unconstitutional insofar as it related to property taxation. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Public Property.

Exemption from taxation of property which belongs to the state and its agencies

and which are held by them for governmental purposes rests upon implication. *Robinson v. Indiana & Ark. Lumber & Mfg. Co.*, 128 Ark. 550, 194 S.W. 870 (1917).

Railroad Property.

An act concerning the method of assessing railroad property which attempted to exclude the value of embankments, tunnels, cuts, ties, trestles, and bridges was void. *Huntington v. Worthen*, 120 U.S. 97, 7 S. Ct. 469, 30 L. Ed. 588 (1887).

School Purposes.

Where the laundry equipment and the dairy equipment together with the land acreage upon which the dairy was situated were not, in 1957, being used directly and exclusively for school purposes, they were not exempt from taxation, especially when no courses were taught, no teachers employed, and no credits given. *Hilger v. Harding College, Inc.*, 231 Ark. 686, 331 S.W.2d 851 (1960).

Time of Assessment and Taxation.

Statute requiring assessment and taxation at the beginning of the year following the purchase is an administrative directive which need not be construed as an exemption of property from taxation in violation of this section. *Taylor v. Finch*, 288 Ark. 50, 701 S.W.2d 377 (1986).

Transfer Tax.

This section does not apply to an excise tax levied upon real estate transfers, as such a tax is not a property tax within the meaning of this section. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

Cited: *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908); *State v. Handlin*, 100 Ark. 175, 139 S.W. 1112 (1911); *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980); *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317, supp. op., 313 Ark. 499-A (1993).

§ 7. Taxation of corporate property.

The power to tax corporations and corporate property, shall not be surrendered or suspended by any contract or grant to which the State may be a party.

§ 8. Maximum rate of state taxes.

The General Assembly shall not have power to levy State taxes for

any one year to exceed, in the aggregate, one per cent of the assessed valuation of the property of the State for that year.

CASE NOTES

Applicability.

This section refers exclusively to a property tax and does not prevent the selection of other objects of taxation and fixing of

the rate. *Baker v. Hill*, 180 Ark. 387, 21 S.W.2d 867 (1929).

Cited: *Porter v. Ivy*, 130 Ark. 329, 197 S.W. 697 (1917).

§ 9. County taxes — Limitation.

No county shall levy a tax to exceed one-half of one per cent., for all purposes; but may levy an additional one-half of one per cent. to pay indebtedness existing at the time of the ratification of this Constitution.

Cross References. Hospital tax, Const., Amend. 32.

Library tax, Const., Amend. 38.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, 48 Ark. L. Rev. 1093.

Note, The Plain Meaning Rule in Ar-

kansas After *Foster v. Jefferson County Quorum Court*, 49 Ark. L. Rev. 559.

CASE NOTES

ANALYSIS

In general.

Existing indebtedness.

Invalid levy.

Sales and use taxes.

Valid levy.

In General.

This section creates a limitation upon the taxing power of the counties unless there be an exceptional case arising under prior contracts, and neither the legislature, the state courts, nor the federal courts can direct or force a county to make a valid levy in excess of such limitation. *Graham v. Parham*, 32 Ark. 676 (1878); *Cope v. Collins*, 37 Ark. 649 (1881).

Existing Indebtedness.

A new county which assumed part of the debt of the parent county which existed at the time of the ratification of the Constitution could be directed by mandamus to levy a tax beyond the limit fixed for general purposes. *Lee County v. State ex rel. Phillips County*, 36 Ark. 276 (1880).

New bonds issued to pay indebtedness created before 1874 stand in lieu of the

original debt. *Desha County v. Chicot County*, 73 Ark. 387, 84 S.W. 625 (1904).

Invalid Levy.

Fees and salaries are part of the ordinary expenses of the county, and after a levy of one-half of one percent has been made for county purposes, an additional levy to pay such expense is invalid. *Greedup v. Franklin County*, 30 Ark. 101 (1875).

Provision in an act that the chancery court might enforce the collection of its decree by causing the levying court to levy such a rate as would pay one-twentieth of the decree, interest, and costs was unconstitutional. *Desha County v. Chicot County*, 73 Ark. 387, 84 S.W. 625 (1904).

A levy of six mills for county purposes is excessive and renders void all tax sales based thereon. *Gaither v. W.A. Gage & Co.*, 82 Ark. 51, 100 S.W. 80 (1907).

Where levy for general county purposes exceeded five mills by $\frac{7}{10}$ mills, levy was void and sale for failure to pay taxes was also void and not cured by confirmation decree. *Sherrill v. Faulkner*, 200 Ark. 1006, 142 S.W.2d 229 (1940).

The certain meaning of this section is that a one percent sales tax for all purposes is unconstitutional. *Foster v. Jefferson County Quorum Court*, 321 Ark. 105, 901 S.W.2d 809 (1995).

Sales and Use Taxes.

This section limits county tax levies to the ad valorem property tax and does not fix a limit on sales and use taxes. *Sanders*

v. County of Sebastian, 324 Ark. 433, 922 S.W.2d 334 (1996).

Valid Levy.

A tax forfeiture for a county tax not exceeding ten mills will be presumed to be valid. *Doniphan Lumber Co. v. Reid*, 82 Ark. 31, 100 S.W. 69 (1907).

Cited: *Bell v. Crawford County*, 287 Ark. 251, 697 S.W.2d 910 (1985).

§ 10. Payment of county and municipal taxes.

The taxes of counties, towns and cities shall only be payable in lawful currency of the United States, or the orders or warrants of said counties, towns and cities respectively.

CASE NOTES

ANALYSIS

- County warrants.
- Payment in cash.
- Payments other than taxes.

County Warrants.

County warrants are receivable for county taxes, except for interest on the public debt and for sinking funds, and are receivable for debts accruing to the county. *St. Louis Nat'l Bank v. Marion County*, 72 Ark. 27, 79 S.W. 791 (1903).

A tax to build a courthouse may be paid in county warrants notwithstanding an order of the levying court that the tax should be receivable only in currency or warrants drawn on the courthouse fund. *Stillwell v. Jackson*, 77 Ark. 250, 93 S.W. 71 (1905).

The contention that a requirement that warrants be registered and numbered and

presented for payment in order of registration was violative of this section was untenable. *Bartlett v. Willis*, 147 Ark. 374, 227 S.W. 596 (1921).

Payment in Cash.

An ordinance providing for payment of a tax in cash might be construed to mean either in money or in municipal orders, warrants, or scrip, and would not violate this section. *Arkansas Public Util. Co. v. Town of Heber Springs*, 151 Ark. 249, 235 S.W. 999 (1921).

Payments Other Than Taxes.

This section simply defines in what funds it may be lawful to pay taxes levied for county purposes and has no relation whatever to funds turned into the county treasury by the county officer as a residue after reserving out his salary. *Powell v. Durden*, 61 Ark. 21, 31 S.W. 740 (1895).

§ 11. Levy and appropriation of taxes.

No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for any purpose shall be used for any other purpose.

CASE NOTES

ANALYSIS

- In general.
- Purpose.
- Applicability.
- Compensation of county officers.

- Definitions.
- Diversion of funds.
- Elections.
- Highway funds.
- Interest.
- Local assessments.

Ordinance.
 Purchase of bonds.
 Purpose of tax.
 School funds.
 Special purposes.
 Street improvement funds.
 Tax forfeitures.
 Transfer of property.

In General.

This section does not conflict with Ark. Const., Art. 5, § 28, limiting all appropriations to a period of two years. *Moore v. Alexander*, 85 Ark. 171, 107 S.W. 395 (1908). See *Gray v. Matheny*, 66 Ark. 36, 48 S.W. 678 (1898); *Lee County v. Robertson*, 66 Ark. 82, 48 S.W. 901 (1899).

Any use of sales tax revenues for purposes other than those designated by the levying ordinance and the ballot is an unconstitutional illegal exaction. *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Purpose.

The intent of this section is for the object to be stated so that the tax revenues cannot be shifted to a use different from that authorized. *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

Applicability.

This section is applicable to municipal corporations. *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

Compensation of County Officers.

County is not entitled to funds left in hands of collector through error in settlement with state auditor. *Independence County v. Wright*, 154 Ark. 184, 241 S.W. 903 (1922).

An act placing county officers on a salary is valid. *State ex rel. Lonoke County v. Swaim*, 167 Ark. 225, 268 S.W. 366 (1925).

Definitions.

Although no Arkansas cases describe "levy," Arkansas cases, statutes, and constitution use the word to mean to impose a tax under authority of law. *Price v. Drainage Dist. No. 17*, 302 Ark. 64, 787 S.W.2d 660 (1990).

Diversion of Funds.

An act providing adequate means for return of funds raised for one purpose, but used for another, is valid. *Cobb v. Parnell*, 183 Ark. 429, 36 S.W.2d 388 (1931).

By the use of the phrase "arising from a

tax levied for one purpose" it was intended that, when the tax was collected, it automatically belonged to the purpose for which it was levied and could not thereafter be diverted by the legislature to another purpose. *Page v. Alexander*, 206 Ark. 479, 177 S.W.2d 415 (1943).

The County Salary Act of Clay County, providing for the surplus school funds to be transferred to a sinking fund and then to the county general fund after the payment of salaries and expense claims, was an unconstitutional diversion of such school funds. *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1945).

The application of excess collector's commissions, raised in the collection of a school district's ad valorem taxes, to the combined expenses of the sheriff/collector's office, is a violation of this section since those excess moneys can only be applied to the expenses of the collector's office alone. *Special School Dist. v. Sebastian County*, 277 Ark. 326, 641 S.W.2d 702 (1982).

The illegal exaction of a bond surplus should be transferred to the county's general fund and the taxpayers are entitled to a refund. *Bell v. Crawford County*, 287 Ark. 251, 697 S.W.2d 910 (1985), cert. denied, 475 U.S. 1120, 106 S. Ct. 1638, 90 L. Ed. 2d 183 (1986).

The mere absence of an object in the law imposing the tax does not constitute illegal exaction; it is only when a diversion of tax revenues occurs from a specific purpose that has been authorized to an unauthorized purpose that an illegal exaction occurs. *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

A city's use of sales tax revenues for purposes other than those specified in its levying ordinance was an illegal exaction. *Maas v. City of Mt. Home*, 338 Ark. 202, 992 S.W.2d 105 (1999).

Elections.

Before a tax can be enacted, a referendum is required by this section. *Ragan v. Venhaus*, 289 Ark. 266, 711 S.W.2d 467 (1986).

Where the official ballot and voting instructions used at a county-wide special election called for the voters to vote for or against the adoption of a 1% sales tax, but no mention was made of a 1% compensating use tax, a subsequent attempt by the quorum court to impose a 1% use tax

pursuant to the favorable vote at the special election was invalid because the ballot title used at the special election did not mention a possible use tax nor were the references to the acts of the legislature sufficient to put the voters on notice that they were also voting on a use tax. *Ragan v. Venhaus*, 289 Ark. 266, 711 S.W.2d 467 (1986).

Highway Funds.

An act authorizing the diversion of funds of a road district to build a bridge is not violative of this section as it constitutes a legislative determination that the bridge is part of the road. *McAdams v. Henley*, 169 Ark. 97, 273 S.W. 355 (1925).

Statute providing for acquisition of right-of-way for state highways and authorizing, upon denial of petition by county court, deduction from payments due county from state highway fund or state revenue to the county highway fund, was held not violative of this provision, since statute providing for county highway fund does not provide how it shall be expended. *Arkansas State Hwy. Comm'n v. Pulaski County*, 205 Ark. 395, 168 S.W.2d 1098 (1943).

Authorization for expenditures of Arkansas Highway and Transportation Department funds to fulfill duties of the Transportation Safety Agency and the Transportation Regulatory Board, did not violate this section. *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

Interest.

An ordinance which authorized the county collector to deposit into the county general fund all interest earned on school tax moneys held by the county collector prior to transfer of those funds to the county treasurer was invalid. *Mears v. Little Rock School Dist.*, 268 Ark. 30, 593 S.W.2d 42 (1980).

Local Assessments.

This section applies only to general taxation and not to local assessments. *McAdams v. Henley*, 169 Ark. 97, 273 S.W. 355 (1925); *Green v. Wulff Drainage Dist.* No. 4, 193 Ark. 1087, 104 S.W.2d 1076 (1937).

Ordinance.

The language "every law imposing a tax" means the levying ordinance, not the

enabling legislation; thus, the county's ordinance, imposing a one percent sales and use tax, could be used for the "general, municipal, and county purposes" referred to in the publication of the ordinance and was not an illegal exaction. *Maddox v. City of Fort Smith*, 346 Ark. 209, 56 S.W.3d 375 (2001).

Purchase of Bonds.

Statute authorizing purchase of general obligation bonds of the state was held not violative of this section. *Ward v. Bailey*, 198 Ark. 27, 127 S.W.2d 272 (1939).

Purpose of Tax.

This section does not require the purpose of the tax to be stated in the ballot or county ordinance calling for the election when the tax is to be used for general purposes. *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

When a tax is enacted without the statement of a purpose, the resulting revenues may be used for general purposes. *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

School Funds.

The statute which provided that part of state funds allocated to an individual school district followed a student transferred from one district to another was not in violation of this section. *Fitzhugh v. Ford*, 230 Ark. 531, 323 S.W.2d 559 (1959).

The sheriff's expenses, by whatever name the office is called, cannot be funded by moneys raised for school purposes. *Special School Dist. v. Sebastian County*, 277 Ark. 326, 641 S.W.2d 702 (1982).

The section did not apply to an action pertaining to the division of penalty payments from delinquent taxes equally between a common school fund and a county general fund since (1) the matter did not involve any tax, but rather a penalty assessed because of late payment of all ad valorem taxes, not just school taxes, and (2) the issue was one involving a procedural matter, namely, how to distribute collected penalties. *Villines v. Pulaski County Bd. of Educ.*, 341 Ark. 125, 14 S.W.3d 510 (2000).

Special Purposes.

A tax for an extraordinary purpose such as building a courthouse does not alter its classification as being for an ordinary county purpose, and a tax levied to build a

courthouse may be paid in warrants drawn upon funds appropriated for ordinary county purposes. *Stillwell v. Jackson*, 77 Ark. 250, 93 S.W. 71 (1905).

A continuing appropriation and levy of a special tax for a special purpose is subject to the two-year limitation provided in Ark. Const., Art. 5, § 8. *Moore v. Alexander*, 85 Ark. 171, 107 S.W. 395 (1908); *Jobe v. Caldwell*, 93 Ark. 503, 125 S.W. 423 (1910).

A tax levied for a special purpose required a biennial appropriation notwithstanding that the General Assembly could not divert the fund so raised to any other purpose. *Dickinson v. Clibourn*, 125 Ark. 101, 187 S.W. 909 (1916).

A tax levied for one purpose cannot be used for another, but a tax once levied for one purpose can thereafter be levied for a different purpose. *Hooker v. Parkin*, 235 Ark. 218, 357 S.W.2d 534 (1962).

Street Improvement Funds.

Ordinance providing for payments by city to street improvement district was not violative of this section where city had fund to be used in construction and repair of streets. *Paris v. Street Imp. Dist. No. 2*, 206 Ark. 926, 175 S.W.2d 199 (1944).

§ 12. Disbursement of funds — Appropriation required.

No money shall be paid out of the treasury until the same shall have been appropriated by law; and then only in accordance with said appropriation.

CASE NOTES

ANALYSIS

In general.
Building funds.
Cash funds.
Continuing appropriation.
County disbursements.
Election expenses.
Federal funds.
Interest collected.
Power to contract.
Refunding purchase money.
Specific appropriation.

In General.

There is no express constitutional restriction upon the supreme power of the legislature to deal with public revenues of any type prior to the time that such reve-

Tax Forfeitures.

The state, following purchase of tax-forfeited lands, is not, upon redemption or sale thereof, held to account to political subdivisions for their proportionate share of taxes, and application of proceeds is not controlled by this section. *Page v. McCuin*, 201 Ark. 890, 148 S.W.2d 308 (1940).

Transfer of Property.

Transfer of property by Revenue Department Building Commission to Public Building Authority for use as sites for public buildings was not contrary to this section because the act under which the land was acquired by the Revenue Department Building Commission recognized that the lands were to be acquired for public purposes. *Morgan v. Sparks*, 258 Ark. 273, 523 S.W.2d 926 (1975).

Cited: *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970); *Hartwick v. Thorne*, 300 Ark. 502, 780 S.W.2d 531 (1989); *Hadley v. North Ark. Community Technical College*, 76 F.3d 1437 (8th Cir. 1996); *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996); *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

nues are placed in the State Treasury. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Building Funds.

Constitutional provisions relating to appropriation of funds are inapplicable to the State Revenue Department Building funds. *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962).

Cash Funds.

Constitutional provision relative to withdrawal of funds from State Treasury refers only to money that is in the State Treasury and does not refer to money held elsewhere which has never reached the treasury. *Gipson v. Ingram*, 215 Ark. 812, 223 S.W.2d 595 (1949); *McArthur v.*

Smallwood, 225 Ark. 328, 281 S.W.2d 428 (1955).

Continuing Appropriation.

The legislature cannot make a continuing appropriation of funds to build a new state capitol, the appropriation to continue for more than two years. *Moore v. Alexander*, 85 Ark. 171, 107 S.W. 395 (1908).

County Disbursements.

The county clerk may contract for printing a list of claims allowed against the county before an appropriation to pay for the printing is made. *Nevada County v. News Printing Co.*, 139 Ark. 502, 206 S.W. 899 (1918).

The county court cannot allow a claim for printing required by the Publicity Act until the levying court has made appropriation therefor. *Nevada County v. News Printing Co.*, 139 Ark. 502, 206 S.W. 899 (1918).

Election Expenses.

The exception to the general rule which applies to that class of necessary obligations arising from county functions imposed by law applies to elections since neither the quorum court nor the county judge has discretion to decide whether money shall be provided for the holding of elections. *Union County v. Union County Election Comm'n*, 274 Ark. 286, 623 S.W.2d 827 (1981).

Federal Funds.

Federal revenue sharing funds were required to be appropriated from the county treasury under same laws and procedures as all other funds appropriated. *Mackey v. McDonald*, 255 Ark. 978, 504 S.W.2d 726 (1974).

Interest Collected.

Statute which provided that the interest derived from investment of daily balances of state funds be pledged to the payment of indebtedness to be issued by Reserve Fund Commission did not provide for a withdrawal of funds from the State Treasury in absence of specific appropriations in violation of this section. *Miles v. Gordon*, 234 Ark. 525, 353 S.W.2d 157 (1962).

Power to Contract.

The power of the county court to make contracts is unimpaired by this section, and the county court may build a courthouse whenever it is expedient to do so. *Sadler v. Craven*, 93 Ark. 11, 123 S.W. 365 (1909).

Refunding Purchase Money.

Money paid for lands forfeited to the state for nonpayment of taxes cannot be repaid on a refunding certificate without a specific appropriation therefor. *Oliver v. Bolinger*, 146 Ark. 242, 225 S.W. 314 (1920).

Mandamus will not lie to compel the refund of money paid by a purchaser of land from the state where the state title failed if no appropriation had been made by the legislature and no allowance made of the claim by the State Claims Commission. *Winn v. Humphrey*, 195 Ark. 131, 111 S.W.2d 468 (1937).

Specific Appropriation.

A specific appropriation is an absolute prerequisite to the drawing of money from the State Treasury required to be appropriated. *Dickinson v. Clibourn*, 125 Ark. 101, 187 S.W. 909 (1916); *Director of Bureau of Legislative Research v. Mackrell*, 212 Ark. 40, 204 S.W.2d 893 (1947); *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

The exercise by the Department of Correction of an option to purchase certain printing and duplicating equipment based upon an appropriations law authorizing the expenditure of a greater amount of "maintenance and general operation" satisfied the requirements of Ark. Const., Art. 5, § 29, and this section as to sufficient specificity since "maintenance and general operation" is defined to include equipment. *Wells v. Heath*, 274 Ark. 45, 622 S.W.2d 163 (1981).

Cited: *Clayton v. City of Little Rock*, 211 Ark. 893, 204 S.W.2d 145 (1947); *Mears v. Little Rock School Dist.*, 268 Ark. 30, 593 S.W.2d 42 (1980); *Hartwick v. Thorne*, 300 Ark. 502, 780 S.W.2d 531 (1989).

§ 13. Illegal exactions.

Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.

RESEARCH REFERENCES

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Official Misconduct Under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

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Arkansas Law Survey, Stewart, Miscellaneous, 8 UALR L.J. 191.

Note, Criminal Procedure — Waiver of

Appellate Review of Death Sentences in Arkansas; Standing — Capacity to Litigate Matters of Public Interest in Arkansas, *Franz v. State*, 296 Ark. 181, 754 S.W. 839 (1988), 11 UALR L.J. 569.

Survey — Criminal Procedure, 12 UALR L.J. 193.

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CASE NOTES

ANALYSIS

In general.
Purpose.
Administrative board action.
Appeal.
Class actions.
Complaint.
Constitutional amendments.
Delegation of authority.
Expenditure of funds.
— Attorneys' fees.
— Expense allowances.
— Interest on warrants.
— Loans.
— Salaries.
— Surplus funds.
Expense of action.
Failure to collect funds.
Federal funds.
Fees.
Fraud.
Illegal appointments.
— Dual offices.
— Highway Commissioner.
Improvement districts.
Jurisdiction.
Laches.
Legislative authority.
Parties.
— Appeal.
— Standing.
— Taxpayers.

Port authorities.
Private use of facilities and equipment.
Remedies.
Res judicata.
Sovereign immunity.
Taxes.
— Approved by electorate.
— Collection procedures.
— Defined.
— Income tax.
— Involuntarily paid taxes.
— Privilege tax.
— Sales tax.
— Unauthorized purpose.
— Voluntarily paid taxes.

In General.

A taxpayer may maintain a suit to prevent a misapplication of state funds, as well as those of counties or towns, and he is entitled to an injunction against such unlawful expenditure as a matter of right. *Taylor, Cleveland & Co. v. Pine Bluff*, 34 Ark. 603 (1879); *Farrell v. Oliver*, 146 Ark. 599, 226 S.W. 529 (1921); *Jones v. Capers*, 231 Ark. 870, 333 S.W.2d 242 (1960); *Arkansas Ass'n of County Judges v. Green*, 232 Ark. 438, 338 S.W.2d 672 (1960); *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963).

This provision is self-executing and imposes no terms or conditions upon the right of citizens there conferred. Samples

v. Grady, 207 Ark. 724, 182 S.W.2d 875 (1944); Starnes v. Sadler, 237 Ark. 325, 372 S.W.2d 585 (1963); Martin v. Couey Chrysler Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992); Saunders v. Neuse, 320 Ark. 547, 898 S.W.2d 43 (1995).

A citizen who is a property owner, taxpayer, and ratepayer has the right to bring an action to enjoin the members of city utility commission from making contracts and spending commission funds with its own members or with companies in which they have a beneficial interest. Price v. Edmonds, 231 Ark. 332, 330 S.W.2d 82 (1959).

Questions of basic authority pertaining to the construction and equipment of a hospital may be raised in an action under this section to enjoin the levy of a tax. Davis v. Waller, 238 Ark. 300, 379 S.W.2d 283 (1964).

An illegal exaction was one either unauthorized or contrary to law and no fraud or bad faith need be shown by taxpayer seeking relief. Mackey v. McDonald, 255 Ark. 978, 504 S.W.2d 726 (1974).

Neither the lease of the county hospital nor the funds generated by the lease payments constituted an illegal exaction; therefore, the hospital lease fund and the accrued interest thereon were not illegal exactions, and the county should be the disbursing agent for said funds. Bell v. Crawford County, 287 Ark. 251, 697 S.W.2d 910 (1985), cert. denied, 475 U.S. 1120, 106 S. Ct. 1638, 90 L. Ed. 2d 183 (1986).

An illegal exaction suit may proceed despite the existence of other adequate remedies. Jackson v. Munson, 288 Ark. 57, 701 S.W.2d 378 (1986).

The illegal exaction provisions encompass two different types of exactions: one type involves the prevention of a misapplication of public funds or the recovery of funds wrongly paid to a public official, and the other involves a taxpayer who seeks to enjoin a government from taxing him. Pledger v. Featherlite Precast Corp., 308 Ark. 124, 823 S.W.2d 852, cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

This section is self-executing and requires no enabling act or supplemental legislation to make its provisions effective. Hartwick v. Thorne, 300 Ark. 502, 780 S.W.2d 531 (1989), supp. op., 300 Ark. 512-A (1990); Martin v. Couey Chrysler

Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992).

Where petitioner seems to suggest that the justices could be liable for illegal exactions in the nature of salaries received that exceeded caps or limitations under the amendment he proposed, petitioner's claim was not only premature, it was also a claim for illegal exactions under Ark. Const., Art. 16, § 13, and could only be commenced in a trial court, not in the appellate courts. White v. Priest, 348 Ark. 135, 73 S.W.3d 572 (2002), cert. denied, 537 U.S. 949, 123 S. Ct. 381, 154 L. Ed. 2d 295 (2002).

Purpose.

This section was not intended to be the vehicle by which taxpayers air individual grievances in the methods by which taxes are assessed and collected. Martin v. Couey Chrysler Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992).

Administrative Board Action.

Each citizen and taxpayer has an interest where his pecuniary or property rights are involved in seeing that no administrative board shall discharge its duties in a manner violative of the statute creating it. Green v. Jones, 164 Ark. 118, 261 S.W. 43 (1924).

Appeal.

A litigant cannot argue a violation of this illegal exaction provision of the Arkansas Constitution before the trial court and contend on appeal that his argument includes the commerce, due process and equal protection clauses of the United States Constitution as well. Cargo Carriers, Inc. v. Ragland, 278 Ark. 401, 646 S.W.2d 681 (1983).

Class Actions.

A suit to protect inhabitants of a county against enforcement of illegal exactions is a class suit to which any citizen has the right to be made a party. Laman v. Moore, 193 Ark. 446, 100 S.W.2d 971 (1937); Samples v. Grady, 207 Ark. 724, 182 S.W.2d 875 (1944).

In action by taxpayers challenging municipal ordinance levying privilege tax on waterworks commission, trial court erred in refusing to require taxpayers to comply with ARCP 23, which does not conflict with this section, governing illegal exactions, but serves as the rule of procedure

in a class action case of such nature. *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

In a class action, where illegal exaction complaint sought no refund to the taxpayers, the chancellor erred in requiring individual notices to the taxpayers in accordance with ARCP 23(c) on grounds that "monetary relief" was being sought in the form of attorney's fees, since attorney fees are not available in an illegal exaction case where no refund is sought. *Hamilton v. Villines*, 323 Ark. 492, 915 S.W.2d 271 (1996).

In action by taxpayers for refunds, chancellor lacked authority to certify as members of class taxpayers who had not filed refund claims because sovereign immunity was waived only for plaintiffs who had followed the procedure outlined in § 26-18-507 and applied for refunds. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

The illegal-exaction clause provides for a constitutionally established class of interested persons; formation of the class is still subject to well established common law principles and is neither limited nor expanded by the provisions of ARCP 23. *Carson v. Weiss*, 333 Ark. 561, 972 S.W.2d 933 (1998).

Under the terms of this section, the parties to an illegal exaction suit include all citizens of the county, city, or town affected by the illegal exaction and, because all citizens are parties to the constitutionally created class, the right to opt out as developed under ARCP 23 is not applicable in an illegal exaction suit; further, communication with the affected citizens has to be unfettered to determine whether any alleged illegal exaction may have been voluntarily paid and, therefore, not subject to suit under this section. *Worth v. City of Rogers*, 351 Ark. 183, 89 S.W.3d 875 (2002).

Because the case was an illegal-exaction suit to recover public funds alleged to have been paid improperly to a public office, the taxpayers were already a class and the city's interlocutory appeal was dismissed for lack of jurisdiction. *City of W. Helena v. Sullivan*, 353 Ark. 420, 108 S.W.3d 615 (2003).

Complaint.

The plaintiff adequately pled a claim for

illegal exaction, even though he may have proposed alternative theories of relief in his complaint. *Hoyle v. Faucher*, 334 Ark. 529, 975 S.W.2d 843 (1998).

Constitutional Amendments.

Taxpayers had standing to seek injunction preventing the placement on the ballot of three proposed constitutional amendments relating to assessment of property and taxation, usury, and jurisdiction of Arkansas courts where such proposed amendments were approved by extended session of legislature. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

Delegation of Authority.

City had authority under Act 328 of 1987, codified as § 14-199-601(a), to construct and operate a cable television system, and pursuant to Act 562 of 1953, codified as § 14-201-203, the city had the power to authorize the local Light and Power Commission, an agency of the city, to operate its cable television system; and the actions of the city did not constitute an illegal exaction. *Paragould Cablevision, Inc. v. City of Paragould*, 305 Ark. 476, 809 S.W.2d 688 (1991).

Section 2-20-511 is an unconstitutional delegation of taxing authority. *Leathers v. Gulf Rice Ark., Inc.*, 338 Ark. 425, 994 S.W.2d 481 (1999).

Expenditure of Funds.

Where funds were illegally paid out of the city funds the chancery court had jurisdiction and the power to grant affirmative as well as injunctive relief in suit by resident taxpayer. *Revis v. Harris*, 217 Ark. 25, 228 S.W.2d 624 (1950).

Statute providing for auditing of county records by comptroller's office did not bar a suit by individual taxpayer for alleged unlawful withdrawal of county funds by county judge. *Ward v. Farrell*, 221 Ark. 363, 253 S.W.2d 353 (1952).

Statutes permitting clerical and administrative employees of teacher and education associations to participate in teacher retirement program wherein state pays the employer's portion of the retirement are unconstitutionally expending public funds for a private purpose. *Chandler v. Board of Trustees*, 236 Ark. 256, 365 S.W.2d 447 (1963).

Money paid to corporations charged with collusive bidding on highway asphalt

contracts and with furnishing asphalt of a grade inferior to that purchased is an illegal exaction within the meaning of this section and may be the subject of an action by a citizen to compel an accounting for such money. *Nelson v. Berry Petroleum Co.*, 242 Ark. 273, 413 S.W.2d 46 (1967).

Where a county built a hospital, then leased it to nonprofit corporation which borrowed a substantial amount to staff and run it, payment of lessee's outstanding debt by purchaser was merely a method to acquire all of lessee's assets, including the remaining six years of the lease, and there was no proof of an illegal exaction solely because the county sold its interest at the same time the lessee sold its interest. *Richerson v. Bearden*, 278 Ark. 350, 645 S.W.2d 946 (1983).

The court has given exactions involving the misapplication of public funds an expansive interpretation because taxpayers are the equitable owners of all funds collected by a government and, in most of the cases, are liable to replenish the funds exhausted by a misapplication or wrongful payment. Under these conditions taxpayers are entitled to broad relief. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852, cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Public funds exaction cases, dealing with the misapplication of public funds or the recovery of funds wrongly paid to a public official, are given a broad interpretation because taxpayers are the equitable owners of all such funds and are obliged to replenish funds wrongly used. *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

The Adjutant General did not occupy his office illegally between the time he lost his federal recognition and the time he was replaced; thus, there was no illegal exaction arising from his use of a residence at a reduced rental or from his receipt of a salary during that period. *Looper v. Thrash*, 334 Ark. 212, 972 S.W.2d 250 (1998).

The defendant city did not unlawfully use its general funds to pay revenue bond indebtedness when it transferred funds to a parking authority where the city produced an affidavit containing evidence that for each year in question, the parking facilities' revenue exceeded the bond service debt obligation. *Rankin v. City of Ft.*

Smith, 337 Ark. 599, 990 S.W.2d 535 (1999).

—Attorneys' Fees.

There is no statutory authority in this state allowing payment of attorneys' fees for public officials and employees when they are terminated or charged with criminal offenses; even if a public employee is wrongfully discharged and subsequently ordered reinstated, the employee is not authorized to collect attorneys' fees from public funds. *Hall v. Thompson*, 283 Ark. 26, 669 S.W.2d 905 (1984).

—Expense Allowances.

Statutes providing expense allowances for county officials were unconstitutional as applied, since in some cases the officials received the expenses in advance and made no accounting therefor and in other cases the officials filed a claim each month but without an itemized account. *Tedford v. Mears*, 258 Ark. 450, 526 S.W.2d 1 (1975).

—Interest on Warrants.

A taxpayer may restrain the reissuance of county warrants with the issuance of separate warrants for the payment of interest on the ground that such warrants are an illegal exaction. *Quinn v. Reed*, 130 Ark. 116, 197 S.W. 15 (1917).

—Loans.

Citizens may not enjoin the loan by the State Board of Education of funds to build a building to be used as a gymnasium, library and auditorium on the ground that such loan is an illegal exaction. *Gibson v. State Bd. of Educ.*, 201 Ark. 1165, 148 S.W.2d 329 (1941).

—Salaries.

A citizen and taxpayer has the right to enjoin the collection of salary for services rendered to the county and probate judge. *Rose v. Brickhouse*, 182 Ark. 1105, 34 S.W.2d 472 (1931).

The taxpayers of a county are entitled to maintain a mandamus action to compel county officers to comply with the provisions of an initiative act fixing their compensation. *Beene v. Hutto*, 192 Ark. 848, 96 S.W.2d 485 (1936).

Plaintiff's action to enjoin payment of salary to a state professor who was a member of a Communist organization stated a cause of action under this section, and a court of equity had jurisdiction to

enjoin payment of public funds in violation of the law. *Cooper v. Henslee*, 257 Ark. 963, 522 S.W.2d 391 (1975).

—Surplus Funds.

Where it was impossible to return surplus funds from a tax levy to construct and equip a hospital because of elapsed time it was not a violation of this section to transfer the funds to the general fund for the benefit of all taxpayers. *Bell v. Crawford County*, 287 Ark. 251, 697 S.W.2d 910 (1985), cert. denied, 475 U.S. 1120, 106 S. Ct. 1638, 90 L. Ed. 2d 183 (1986).

Expense of Action.

Supreme Court would not approve any requirement that the state be called upon to bear the expense of preparation and trial of taxpayers' actions authorized by this section. *State ex rel. Purcell v. Nelson*, 246 Ark. 210, 438 S.W.2d 33 (1969).

Failure to Collect Funds.

Failure to collect restitution for theft does not qualify as a misapplication of public funds for illegal exaction purposes. *Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999).

Federal Funds.

Where county general revenue would be used to reimburse the federal government should unauthorized expenditures be made under the Revenue Sharing Act, county taxpayer can challenge improper appropriation of the federal moneys because not made according to state law and procedure. *Mackey v. McDonald*, 255 Ark. 978, 504 S.W.2d 726 (1974).

Fees.

Illegal fees fixed by the court, the payment of which by the accused was a condition for the suspension of sentence or dismissal of charges, could be recovered in a taxpayer's suit in chancery court. *Parker v. Laws*, 249 Ark. 632, 460 S.W.2d 337 (1970).

Fraud.

A petition showing fraud and collusion between school directors and a contractor erecting a school establishes the right of a taxpayer to maintain his suit to enjoin acceptance of the building. *Ford v. Collision*, 128 Ark. 119, 193 S.W. 531 (1917).

An action to cancel a deed fraudulently executed is maintainable by a taxpayer

and is not required to be brought by the state because all debts of the district have been paid and funds thereof belonged to the state. *Eddy v. Schuman*, 206 Ark. 849, 177 S.W.2d 918 (1944).

Illegal Appointments.

—Dual Offices.

Where members of the General Assembly were illegally holding state civil office as members of state boards during the term for which they were elected to the General Assembly, such activities constituted illegal exaction affording injunctive relief to any citizen or taxpayer of the state. *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963).

Taxpayers are permitted to bring suits in an open court, and the courts have jurisdiction to enjoin state senators and representatives from holding other offices during the term for which they are elected. *Harvey v. Ridgeway*, 248 Ark. 35, 450 S.W.2d 281 (1970).

Where a member of the House of Representatives had been appointed as a deputy prosecuting attorney and suit was brought challenging that appointment as unconstitutional, such representative would not be required to make an accounting for funds received in his capacity as deputy prosecuting attorney. *Martindale v. Honey*, 261 Ark. 708, 551 S.W.2d 202 (1977).

There will be an illegal exaction if a public officer persists in a constitutional violation, and an action in the circuit court for a declaratory judgment that State Attorney General could not also hold commission as United States army reserve officer is proper. *Jones v. Clark*, 278 Ark. 119, 644 S.W.2d 257 (1983).

—Highway Commissioner.

Since the State Highway Commission is entrusted with the authority and responsibility, among other things, of spending large sums of state funds, the plaintiff, as a taxpayer, had standing to challenge the Governor's appointment of the second State Highway Commissioner from the same district. *White v. Hankins*, 276 Ark. 562, 637 S.W.2d 603 (1982).

Improvement Districts.

One who is a citizen of a county and a taxpayer in a drainage district may appeal from an order of the county court

allowing a claim against the district. *Huddleston v. Coffman*, 90 Ark. 219, 118 S.W. 1010 (1909).

The owner of property within an improvement district has the right to sue to prevent waste or mismanagement or improper diversion of the funds of the district. *City of Bentonville v. Browne*, 108 Ark. 306, 158 S.W. 161 (1913); *Seitz v. Meriwether*, 114 Ark. 289, 169 S.W. 1175 (1914); *Keenan v. Williams*, 225 Ark. 556, 283 S.W.2d 688 (1955).

Jurisdiction.

Where taxpayers' action was brought only after the expenditure of revenue-sharing funds for land by the county court, there being no fraud alleged or shown, taxpayers' remedy was by appeal to circuit court from county court's allowance and payment of the claim and not to chancery court. *Cook v. Burchfield*, 258 Ark. 312, 523 S.W.2d 925 (1975).

Chancery court has jurisdiction to order repayment of an illegal exaction, even where the "exaction" is in good faith and has been approved by the county court. *Munson v. Abbott*, 269 Ark. 441, 602 S.W.2d 649 (1980).

Equity has the power to enjoin illegal exactions by municipalities. *Smith v. City of Springdale*, 291 Ark. 63, 722 S.W.2d 569 (1987).

A suit to prevent an illegal exaction must be commenced in a trial court; such a suit cannot be commenced in the appellate court. *Franz v. State*, 296 Ark. 181, 754 S.W.2d 839 (1988), overruled in part on other grounds, *State v. Robbins*, 342 Ark. 262, 27 S.W.3d 419 (2000).

A suit to declare a tax statute unconstitutional, and therefore void, is different from a suit to determine whether the taxpayer's transactions fall within an exemption created by the statute, and chancellors do not have jurisdiction to hold that the procedural requirement of the tax law do not apply where there is no allegation that the basic tax statute is void. *Taber v. Pledger*, 302 Ark. 484, 791 S.W.2d 361, cert. denied, 498 U.S. 967, 111 S. Ct. 429, 112 L. Ed. 2d 413 (1990).

Illegal tax exaction cases involve a taxpayer who seeks to enjoin a governmental entity from taxing him, and the exaction itself must be alleged to be illegal before the chancery court has jurisdiction under the constitutional provision. *Martin v.*

Couey Chrysler Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992).

Circuit court had jurisdiction to hear a case involving an illegal exaction by a school district. *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

If an illegal tax has properly been challenged, as opposed to a challenge to assessment or collection procedures, jurisdiction of the matter is appropriate in chancery court. *Hoyle v. Faucher*, 334 Ark. 529, 975 S.W.2d 843 (1998).

Laches.

A taxpayer who did not question the validity or correctness of a sales tax assessment within the time provided by the act is not entitled to enjoin the collection of the tax. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942).

Legislative Authority.

The General Assembly has the authority to regulate the practice to be pursued in enforcing the illegal exaction provision as long as the constitutional guarantee is not abridged. *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

Parties.

In a suit by a citizen of a border town to enjoin the collection of only that rate of tax on gasoline as was charged in an adjoining state, towns not selling gasoline may not intervene as they are not citizens within the Constitution. *Park v. Hardin*, 203 Ark. 1135, 160 S.W.2d 501 (1942).

Foreign corporation who is a taxpayer on property in a city has the right to file an action in court testing the validity of an ordinance passed for construction of a water plant, if property of the corporation will be subject to additional tax as a result of the ordinance. *Arkansas-Missouri Power Corp. v. City of Rector*, 214 Ark. 649, 217 S.W.2d 335 (1949).

In an action under this section by a citizen to compel an accounting for money paid to corporations charged with collusive bidding on highway asphalt contracts and with furnishing asphalt of a grade inferior to that purchased, it is not necessary that the highway department be made a party. *Nelson v. Berry Petroleum Co.*, 242 Ark. 273, 413 S.W.2d 46 (1967).

—Appeal.

An interested citizen and taxpayer, while not a party litigant in a county court

suit granting an order for a certain county road, was such an interested party as to have the right to appeal from such order and upon denial of such right of appeal his petition to be permitted to intervene and become a party to such action should have been allowed, and, on its denial, he had the right to appeal from the county court's ruling at any time within six months. *Garner v. Greene County*, 229 Ark. 174, 313 S.W.2d 785 (1958).

—Standing.

This section is self-executing, and it permits taxpayers to challenge the legality of expenditures of public funds; so plaintiff had standing as a taxpayer to pursue the relief authorized by this section, and dismissal of illegal exaction allegation of complaint was reversible error. *Beshear v. Ripling*, 292 Ark. 79, 728 S.W.2d 170 (1987).

The standing requirements to bring an "illegal tax" illegal-exaction case are not more stringent than the standing requirements to bring a "public-funds" illegal-exaction case. *Ghegan & Ghegan, Inc. v. Weiss*, 338 Ark. 9, 991 S.W.2d 536 (1999).

A retail dealer of soft drinks had standing to challenge the constitutionality of § 26-57-904 as an illegal exaction, notwithstanding that the tax imposed by the statute only applies to distributors, manufacturers, and wholesale dealers, because it had paid and would continue to pay the full amount of the tax, which its distributor passed on to it in a separately itemized charge on its sales invoices. *Ghegan & Ghegan, Inc. v. Weiss*, 338 Ark. 9, 991 S.W.2d 536 (1999).

The plaintiff did not have standing to sue for illegal exaction for the disbursement of federal taxpayer funds paid into dedicated accounts and not commingled with the defendant city's general fund as she failed to indicate under what authority she asserted that the city and taxpayers would be liable to repay any misapplied funds and as the funds used to finance the city's redevelopment program were funds strictly derived from federal taxes instead of state taxes. *Chapman v. Bevilacqua*, 344 Ark. 262, 42 S.W.3d 378 (2001).

The plaintiff had standing to challenge the defendant city's expenditure of general fund monies to pay for the salaries of city employees who spent a minimal

amount of time writing checks for a federal program. *Chapman v. Bevilacqua*, 344 Ark. 262, 42 S.W.3d 378 (2001).

—Taxpayers.

Taxpayer could have filed illegal exaction suit to recover compensation paid to county board members against the ineligible board members; it was not necessary to seek writs of mandamus commanding the county judge and prosecuting attorney to file the suit. *Saunders v. Neuse*, 320 Ark. 547, 898 S.W.2d 43 (1995).

Port Authorities.

Because a port authority is authorized by law to purchase liability insurance under § 23-79-210, an assertion that an illegal exaction under this section of the constitution would result from paying the insurance premium is erroneous. *Little Rock Port Auth. v. McCain*, 296 Ark. 130, 752 S.W.2d 44 (1988).

Private Use of Facilities and Equipment.

A citizen has a right to maintain action in chancery court to enjoin county judge from using county road machinery in constructing dams, reservoirs and terraces for private individuals. *Needham v. Garner*, 233 Ark. 1006, 350 S.W.2d 194 (1961); *Cunningham v. Stockton*, 235 Ark. 345, 359 S.W.2d 808 (1962); *Pogue v. Cooper*, 284 Ark. 105, 679 S.W.2d 207 (1984).

Remedies.

Equity will not enjoin a city from prosecutions for violations of its ordinances. *Taylor, Cleveland & Co. v. Pine Bluff*, 34 Ark. 603 (1879).

A chancery court has jurisdiction of a suit by an employer to restrain the enforcement of an assessment of contributions to an unemployment fund on the ground that it was an illegal exaction notwithstanding a failure to pursue a statutory remedy provided in the act. *McCain v. Hammock*, 204 Ark. 163, 161 S.W.2d 192 (1942).

The refusal of the Attorney General or the prosecuting attorney is not a condition precedent to the exercise of the right of a citizen to bring suit to protect against the enforcement of an illegal exaction. *Samples v. Grady*, 207 Ark. 724, 182 S.W.2d 875 (1944); *Nelson v. Berry Petroleum Co.*, 242 Ark. 273, 413 S.W.2d 46 (1967).

Procedural matters pertaining to the

holding of an election to authorize the construction and equipping of a hospital may not be raised in an action under this section to enjoin the levy of a tax. *Davis v. Waller*, 238 Ark. 300, 379 S.W.2d 283 (1964).

Action under this section is not the proper remedy to question the validity of an election authorizing the levy of a tax for the construction of a county hospital, based on failure to provide citizens of two townships opportunity to vote. *Curry v. Dawson*, 238 Ark. 310, 379 S.W.2d 287 (1964).

Writ of mandamus for a hearing before the chancellor on a suit challenging electrical rates as an illegal exaction under this section was denied where the petitioner could appeal from the Arkansas Public Service Commission to the Court of Appeals. *Jackson v. Munson*, 288 Ark. 57, 701 S.W.2d 378 (1986).

Where an out-of-state taxpayer asserted that an exemption from state income taxes for Arkansas residents only was unconstitutional on its face, the proper method of challenging the tax was via the illegal-exaction clause. *Carson v. Weiss*, 333 Ark. 561, 972 S.W.2d 933 (1998).

Res Judicata.

A judgment upholding the validity of an act in a suit brought by a citizen on behalf of himself and all other interested persons to protect against the enforcement of illegal exactions is *res judicata* in a subsequent suit by another citizen to enjoin enforcement of the same act. *McCarroll v. Farrar*, 199 Ark. 320, 134 S.W.2d 561 (1939).

Sovereign Immunity.

This section implies a right a sue which would be rendered meaningless if Ark. Const., Art. 5, § 20 provision that the state not be a defendant controlled. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

The Arkansas Revenue Commissioner could not avail himself of sovereign immunity with respect to taxpayers' suit challenging income tax exemptions for government employees since the suit was not against the State of Arkansas. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Taxes.

A court of equity has jurisdiction to

enjoin the collection of an illegal tax, thereby preventing a multiplicity of suits. *City of Little Rock v. Prather*, 46 Ark. 471 (1885); *Merwin v. Fussell*, 93 Ark. 336, 124 S.W. 1021 (1910); *Harrison v. Norton*, 104 Ark. 16, 148 S.W. 497 (1912).

A tax levy cannot be enjoined merely because the tax is excessive. *Missouri P.R.R. v. Fish*, 181 Ark. 863, 28 S.W.2d 333 (1930).

An individual or corporation can sue in equity to enjoin enforcement of any illegal tax or exaction. *McCarroll v. Gregory-Robinson-Speas, Inc.*, 198 Ark. 235, 129 S.W.2d 254 (1939).

Where county clerk in making up assessment books for 1949 failed to subjoin description of mineral interests to the corresponding description of the surface, an illegal exaction was not created within this constitutional provision which could be enjoined unless suit to enjoin certification of taxes is coupled with tender of sum actually due. *Schuman v. Ouachita County*, 218 Ark. 46, 234 S.W.2d 42 (1950).

Suit could be brought in the Pulaski chancery court to determine the constitutionality of an act levying a removal tax on a railroad even though no overt act had been committed calling for enforcement of the provisions of the statute, in that the railroad had not notified the Commerce Commission of any intention to remove the railroad nor asked for written permission to remove it. *Arkansas Commerce Comm'n v. Arkansas & Ozarks Ry.*, 235 Ark. 89, 357 S.W.2d 295 (1962).

If a tax is a legal levy, taxpayers may not refuse to pay the tax merely because part of the money may be used illegally but must bring suit to enjoin the expenditure. *Anderson Trucking Serv., Inc. v. Tax Div., Ark. Pub. Serv. Comm'n*, 261 Ark. 69, 546 S.W.2d 430 (1977).

A city tax which is not authorized by a delegated power of taxation is an illegal exaction. *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

A charge to pay for a salary increase for city policemen and firemen was not for a specific, special service but was a tax to pay additional money for services already in effect, and the ordinance imposing it was void as an illegal exaction. *City of N. Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983).

When a taxpayer seeks to enjoin a government from taxing him, the exaction itself must be alleged to be illegal before the chancery court has jurisdiction under this section. A flaw in the assessment or collection procedure, no matter how serious from the taxpayer's point of view, does not make the exaction itself illegal. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852, cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Where taxpayers plead that a tax was passed and certified and subsequently the purpose for the tax failed, their suit fit within the definition of a suit to prevent an illegal exaction. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

In a proper case, a taxpayer may be estopped from questioning the validity of a tax. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

An illegal exaction occurred when a primary purpose of a tax could not be accomplished and the collection of the tax was continued. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

Suits to determine whether the taxpayer transaction falls within an exemption created by statute do not come within the Article 16, Section 13, exaction section. *Western Foods, Inc. v. Weiss*, 338 Ark. 140, 992 S.W.2d 100 (1999).

—Approved by Electorate.

This section permitted complaint for a judgment declaring that election was "null and void" and that the tax approved by the election constituted an illegal exaction. The circuit court erred in failing to declare that the tax constituted an illegal exaction. *Foster v. Jefferson County Quorum Court*, 321 Ark. 105, 901 S.W.2d 809 (1995).

—Collection Procedures.

A flaw in the assessment or collection procedure, no matter how serious from the taxpayer's point of view, will not make the exaction illegal; this section was not intended to be a vehicle for such a grievance. *Tucker v. Holt*, 343 Ark. 216, 33 S.W.3d 110 (2000).

—Defined.

Surcharge which was imposed to pay debt for acquisition of waste disposal incinerator plant by separate governmental

authority, not related to services provided by city, was not a "fee," but rather a "tax." *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995).

—Income Tax.

A provision of income tax law abolishing the right to injunction against collection of the tax is invalid. *McCarroll v. Gregory-Robinson-Speas, Inc.*, 198 Ark. 235, 129 S.W.2d 254 (1939).

Private retired taxpayers had standing to challenge state income tax exemptions for retired government employees. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

—Involuntarily paid taxes.

Illegal exaction suit filed by a company, which claimed that Ark. Code Ann. § 2-20-511 was unconstitutional, was a class action filed on behalf of all affected taxpayers despite the fact that the exaction issue was not decided; therefore, two taxpayers were permitted to seek a refund in a subsequent illegal exaction action because the assessments in question were not voluntarily paid. *Carwell Elevator Co. v. Leathers*, 352 Ark. 381, 101 S.W.3d 211 (2003).

—Privilege Tax.

This provision has not been construed to preclude refund of illegally exacted privilege taxes. *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

Privilege tax levied by city on waterworks commission was an unauthorized tax and, therefore, an illegal exaction where (1) the assessment was not a charge for services rendered to the waterworks; (2) the tax was levied on the waterworks and passed on to the customer without regard to the cost of operations, maintenance, depreciation and debt; and (3) the assessment was designated a privilege tax by the ordinances. *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

—Sales Tax.

A court of equity has jurisdiction in an action by an exempted resident corporation to enjoin the threatened auditing of its books and assessment and collection of a sales tax. *Commissioner of Revenues v. Dillard's, Inc.*, 224 Ark. 826, 276 S.W.2d 424 (1955).

The general rule is that funds which have been acquired through an illegal exaction are to be returned pro rata to the various taxpayers who initially paid them, but where funds were collected through a sales tax, it is probable that the proof will show that it is impossible to determine, with any degree of economic certainty, who paid the taxes; therefore, it is probable that the funds, if any, cannot be refunded to the initial payers, and a hearing must be held to determine how the funds are to be disposed. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

The assertion that a city and county imposed a retail sales tax on sales made outside the city and county did not plead an illegal exaction claim since the plaintiffs claimed neither that funds generated by the sales taxes had been misapplied or illegally spent or that the local tax ordinances were invalid. *Western Foods, Inc. v. Weiss*, 338 Ark. 140, 992 S.W.2d 100 (1999).

—Unauthorized Purpose.

City which assumed the debt of authority formed to construct and operate a waste disposal incineration plant, a separate governmental entity, and which levied a charge against residences to pay the authority's debt was without authority to levy a fee that was to pay the long-term debt of the authority. Thus, the ordinance imposing the charge was unlawful. *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995).

—Voluntarily Paid Taxes.

The common-law rule prohibiting the recovery of voluntarily paid taxes is appli-

cable to illegal exactions which violate this provision. *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

Taxes paid after the filing of a complaint alleging an illegal exaction were paid under protest and, therefore, were not voluntary. *Hoyle v. Faucher*, 334 Ark. 529, 975 S.W.2d 843 (1998).

Cited: *Dean v. Cole*, 236 Ark. 64, 364 S.W.2d 305 (1963); *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964); *B.D.T., Inc. v. Moore*, 260 Ark. 581, 543 S.W.2d 220 (1976); *Arkansas State Hwy. Comm'n v. Wood*, 264 Ark. 425, 572 S.W.2d 583 (1978); *Wells v. Purcell*, 267 Ark. 456, 592 S.W.2d 100 (1979); *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981); *Area Agency on Aging of W. Cent. Ark., Inc. v. Everett*, 279 Ark. 47, 648 S.W.2d 467 (1983); *American Trucking Ass'n v. Gray*, 280 Ark. 258, 657 S.W.2d 207 (1983); *Murphy v. Epes*, 283 Ark. 517, 678 S.W.2d 352 (1984); *Tackett v. Hess*, 291 Ark. 239, 723 S.W.2d 833 (1987); *Franz v. Lockhart*, 700 F. Supp. 1005 (E.D. Ark. 1988); *American Trucking Ass'n v. Smith*, 496 U.S. 167, 110 S. Ct. 2323, 110 L. Ed. 2d 148 (1990); *Union Nat'l Bank v. Barnhart*, 308 Ark. 190, 823 S.W.2d 878 (1992); *Skelton v. City of Atkins*, 317 Ark. 28, 875 S.W.2d 504 (1994), (decision under prior law); *Zaruba v. Phillips*, 320 Ark. 199, 895 S.W.2d 544 (1995); *Foster v. Jefferson County Quorum Court*, 321 Ark. 105, 901 S.W.2d 809 (1995); *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995); *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996); *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997); *Butt v. Evans Law Firm*, 351 Ark. 566, 98 S.W.3d 1 (2003).

§ 14. Procedure for adjustment of taxes after reappraisal or reassessment of property.

(a) Whenever a countywide reappraisal or reassessment of property subject to ad valorem taxes made in accordance with procedures established by the General Assembly shall result in an increase in the aggregate value of taxable real and personal property in any taxing unit in this State of ten percent (10%) or more over the previous year the rate of city or town, county, school district, and community college district taxes levied against the taxable real and personal property of each such taxing unit shall, upon completion of such reappraisal or reassessment, be adjusted or rolled back, by the governing body of the taxing unit, for the year for which levied as provided below. The General

Assembly shall, by law, establish the procedures to be followed by a county in making a countywide reappraisal or reassessment of property which will, upon completion, authorize the adjustment or rollback of property tax rates or millage, as authorized hereinabove. The adjustment or rollback of tax rates or millage for the "base year" as hereinafter defined shall be designed to assure that each taxing unit will receive an amount of tax revenue from each tax source no greater than ten percent (10%) above the revenues received during the previous year from each such tax source, adjusted for any lawful tax or millage rate increase or reduction imposed in the manner provided by law for the year for which the tax adjustment or rollback is to be made, and after making the following additional adjustments:

(i) by excluding from such calculation the assessed value of, and taxes derived from, tangible personal property assessed in the taxing unit, and all real and tangible personal property of public utilities and regulated carriers assessed in the taxing unit, and

(ii) by computing the adjusted or rollback millage rates on the basis of the reassessed taxable real property for the base year that will produce an amount of revenue no greater than ten percent (10%) above the revenues produced from the assessed value of real property in the taxing unit (after making the aforementioned adjustments for personal properties and properties of public utilities and regulated carriers noted above) from millage rates in effect in the taxing unit during the base year in which the millage adjustment or rollback is to be calculated. Provided, further, that in calculating the amount of adjusted or rollback millage necessary to produce tax revenues no greater than ten percent (10%) above the revenues received during the previous year, the governing body shall separate from the assessed value of taxable real property of the taxing unit, newly-discovered real property and new construction and improvements to real property, after making the adjustments for personal property or property of public utilities and regulated carriers noted above, and shall compute the millage necessary to produce an amount of revenues equal to, but no greater than the base year revenues of the taxing unit from each millage source. Such taxing unit may elect either to obtain an increase in revenues equal to the amount of revenues that the computed or adjusted rollback millage will produce from newly-discovered real property and new construction and improvements to real property, or if the same be less than ten percent (10%), the governing body of the taxing unit may recompute the millage rate to be charged to produce an amount no greater than ten percent (10%) above the revenues collected for taxable real property during the base year.

Provided, however, that the amount of revenues to be derived from taxable personal property assessed in the taxing unit for the base year, other than personal property taxes to be paid by public utilities and regulated carriers in the manner provided hereinabove, shall be computed at the millage necessary to produce the same dollar amount of revenues derived during the current year in which the base year adjustment or rollback of millage is computed, and the millage neces-

sary to produce the amount of revenues received from personal property taxes received by the taxing unit, for the base year shall be reduced annually as the assessed value of taxable personal property increases until the amount of revenues from personal property taxes, computed on the basis of the current year millage rates will produce an amount of revenues from taxable personal property equal to or greater than received during the base year, and thereafter the millage rates for computing personal property taxes shall be the millage rates levied for the current year.

Provided, however, that the taxes to be paid by public utilities and regulated carriers in the respective taxing units of the several counties of this State during the first five (5) calendar years in which taxes are levied on the taxable real and personal property as reassessed and equalized in each of the respective counties as a part of a statewide reappraisal program, shall be the greater of the following:

(1) the amount of taxes paid on property owned by such public utilities or regulated carriers in or assigned to such taxing unit, less adjustments for properties disposed of or reductions in the assessed valuation of such properties in the base year as defined below, or

(2) the amount of taxes due on the assessed valuation of taxable real and tangible personal property belonging to the public utilities or regulated carriers located in or assigned to the taxing unit in each county at millage rates levied for the current year.

As used herein, the term "base year" shall mean the year in which a county completes reassessment and equalization of taxable real and personal property as a part of a statewide reappraisal program, and extends the adjusted or rolled back millage rates for the first time, as provided in subsection (a) of this Section, for the respective taxing units in such county for collection in the following year.

(i) in the event the amount of taxes paid the taxing unit in a county in the base year, as defined herein, is greater than the taxes due to be paid to such taxing unit for the current year of any year of the second (2nd) period of five (5) years after the base year, the difference between the base year taxes and the current year taxes for any year of such five (5) year period shall be adjusted as follows:

Current year of second period of (5) years	Taxes shall be current year taxes to which shall be added the following percentage of the difference between the current year taxes and the base year taxes (if greater than current year taxes)
1st year	80% of difference
2nd year	60% of difference
3rd year	40% of difference
4th year	20% of difference
5th year and thereafter	Current years taxes only.

(ii) if the current year taxes of a public utility or regulated carrier equal or exceed the base years taxes due a taxing unit during any year of the first ten (10) years after the base year, the amount of taxes to be paid to such taxing unit shall thereafter be the current years taxes and the adjustment authorized herein shall no longer apply in computing taxes to be paid to such taxing unit.

Provided, that in the event the aforementioned requirement for payment of taxes by public utilities and regulated carriers, or any class of utilities or carriers for the ten (10) year period noted above, shall be held by court decision to be contrary to the constitution or statutes of this State or of the Federal Government, the General Assembly may provide for other utilities or classes of carriers to receive the same treatment provided or required under the court order, if deemed necessary to promote equity between similar utilities or classes of carriers.

(b) The General Assembly shall, by law, provide for procedures to be followed with respect to adjusting ad valorem taxes or millage pledged for bonded indebtedness purposes, to assure that the adjusted or rolled-back rate of tax or millage levied for bonded indebtedness purposes will, at all times, provide a level of income sufficient to meet the current requirements of all principal, interest, paying agent fees, reserves, and other requirements of the bond indenture. [Added by Const. Amend. 59.]

CASE NOTES

ANALYSIS

Purpose.

Amount of revenue increase.

Equalization of tax rates.

Personal property taxes.

Real estate taxes.

Rollback of taxes.

Taxing unit.

Purpose.

The overall intent of Ark. Const. Amend. 59 was to equalize the assessments and millage rates with respect to personal and real property taxes after completion of reappraisal. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

Amount of Revenue Increase.

Statutory provision that, upon completion of a countywide reappraisal or reassessment of property, each taxing unit will receive an amount of tax revenue from each tax source no greater than 10% above the revenues received during the previous year is not a guarantee to school districts that they would get an exact 10% increase

in tax money; thus, where following a reappraisal and reassessment of property, school districts received increases ranging from 4.9% to 8.7%, the districts could not argue that the increases were insufficient. *Hot Springs Sch. Dist. No. 6 v. Wells*, 281 Ark. 303, 663 S.W.2d 733 (1984).

Equalization of Tax Rates.

In order to equalize the rate of taxation, it is necessary to (1) lower the assessed valuation of personal property, (2) increase the assessed valuation of the real estate, or (3) hold the personal property rates at the present level, with adjustments, until the real estate tax rates reach the same level. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

This section and § 26-26-401 et seq. contemplate that equalization of rates of taxation on realty and personalty will occur because there will be an increase in personal property in any taxing unit from year to year, but the amount of realty will remain the same. *Crane v. Newark Sch. Dist. No. 33*, 303 Ark. 650, 799 S.W.2d 536 (1990).

Personal Property Taxes.

Ark. Const. Amend. 59 requires that personal property be exempted from new levies until such time as the rates on personal property and real property are equalized. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

Where property taxes were rolled back from one mill to .4 mill to comply with this section, the city's subsequent return to the old rate of one mill, which was in excess of 10% over the base year, on the newly increased appraised value of the property violated this section. *Wright v. Storey*, 298 Ark. 508, 769 S.W.2d 16 (1989).

Real Estate Taxes.

From both the wording of Ark. Const. Amend. 59 and § 26-26-401 et seq., real estate taxes cannot be increased more than ten percent (10%) per year until such time as the personal and real property evaluation and millage rates are equalized. The amendment prevents the taxing units from receiving more than a ten percent (10%) increase in tax collections for any one year; in the event the applicable millage would result in the collection of more than a ten percent (10%) increase in revenues, a rollback procedure is mandated. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

The revenues produced from real estate taxes cannot be increased more than ten percent (10%) in the "base year" (the year following completion of reappraisal or reassessment); however, the adjustment or rollback in the "base year" is to be "adjusted for any lawful tax or millage rate increase or reduction imposed in the manner provided by law." Therefore, in the absence of a lawful increase in the millage rate (which would apply only to real estate until the rates are equalized), the personal property rate reduction will depend upon the increase in revenues from real property, after making the specified ad-

justments. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

The pleadings, affidavits, and other materials gave rise to more than a mere suspicion that reappraisals conducted in a specific county were countywide reappraisals subject to the rollback provision of Amendment 59 and, therefore, the county was not entitled to summary judgment in an action alleging an unconstitutional collection of property taxes. *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

The trial court erred in finding that a reappraisal begun by a county in 1996 was not a countywide reappraisal where the defendants not only failed to introduce evidence that the reappraisal was not countywide, but also conceded on the record that the reassessment begun in 1996 was subject to the provisions of Amendment 59. *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

Rollback of Taxes.

The amendment does not grant any authority for a single taxing unit to impose various taxing rates; instead, it allows for a rollback when the whole taxing unit has been subjected to a 10 percent increase in taxable real and personal property in a single year. *Frank v. Barker*, 341 Ark. 577, 20 S.W.3d 293 (2000).

Taxing Unit.

A "taxing unit," as it is used in the amendment, and as it applied to a case alleging illegal exaction of tax by a school district, referred to the "school district." *Frank v. Barker*, 341 Ark. 577, 20 S.W.3d 293 (2000).

Cited: *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986); *Pockrus v. Bella Vista Village Property Owners Ass'n*, 316 Ark. 468, 872 S.W.2d 416 (1994); *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

§ 15. Assessment of residential property and agricultural, pasture, timber, residential and commercial land.

(a) Residential property used solely as the principal place of residence of the owner thereof shall be assessed in accordance with its value as a residence, so long as said property is used as the principal place of residence of the owner thereof, and shall not be assessed in accordance with some other method of valuation until said property ceases to be used for such residential purpose.

(b) Agricultural land, pasture land, timber land, residential and commercial land, excluding structures thereon, used primarily as such, shall be valued for taxation purposes under the provisions of Section 5 of this Article, upon the basis of its agricultural, pasture, timber, residential, or commercial productivity or use, and when so valued, such land shall be assessed at the same percentum of value and taxed at the same rate as other property subject to ad valorem taxes.

(c) The General Assembly shall enact laws providing for the administration and enforcement of this Section and for the imposition of penalties for violations of this Section, or statutes enacted pursuant thereto. [Added by Const. Amend. 59.]

RESEARCH REFERENCES

Ark. L. Notes. Malone, Farmland Preservation, 1985 Ark. L. Notes 73.

CASE NOTES

ANALYSIS

Residential property.
Valuation.

Residential Property.

Because subsection (a) provides that residential property used solely as the residence of the owner shall be valued as such until it ceases to be residential property, and subsection (b) provides that land, excluding the structures thereon, shall be based upon use, by implication, residential property, regardless of who resides there, should be valued according to

its use. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Valuation.

Where there was no evidence an appraisal occurred as a result of a county or state wide reappraisal of property by one of the four methods listed in § 26-26-401, § 26-26-407 did not apply. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Cited: *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986); *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

§ 16. Providing for exemption of value of residence of person 65 or over.

The General Assembly, upon approval thereof by a vote of not less than three-fourths ($\frac{3}{4}$ ths) of the members elected to each house, may provide that the valuation of real property actually occupied by its owner as a residence who is sixty-five (65) years of age, or older, may be exempt in such amount as may be determined by law, but no greater than the first Twenty Thousand Dollars (\$20,000) in value thereof, as a homestead from ad valorem property taxes. [Added by Const. Amend. 59.]

CASE NOTES

Cited: *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986); *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

ARTICLE 17

RAILROADS, CANALS AND TURNPIKES

SECTION.

- 1. Common carriers — Construction of railroads.
- 2. Offices of common carriers.
- 3. Equal right to transportation.
- 4. Parallel or competing lines.
- 5. Officers, agents and employees of carrier — Personal interest in contracts prohibited.
- 6. Discrimination by carriers.

SECTION.

- 7. Free passes.
- 8. Condition of remission of forfeitures.
- 9. Right of eminent domain.
- 10. Regulation of carriers.
- 11. Movable property of carriers subject to execution.
- 12. Damages by railroads to persons and property — Liability.
- 13. Annual reports of railroads.

RESEARCH REFERENCES

Am. Jur. 13 *Am. Jur.* 2d, Carriers, § 25. **C.J.S.** 13 *C.J.S.*, Carriers, §§ 16-24 and § 567 et seq.

§ 1. Common carriers — Construction of railroads.

All railroads, canals and turnpikes shall be public highways, and all railroads and canal companies shall be common carriers. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other road, and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

CASE NOTES

ANALYSIS

Eminent domain.
Intersections.
Joint use of track.
Regulation.
Spurs.

Eminent Domain.

A de facto corporation can exercise the right of eminent domain, and a railroad resisting condemnation of a crossing right-of-way must do so in a court of equity. *Cairo, T. & S.R.R. v. Arkansas Short Line*, 172 Ark. 317, 288 S.W. 715 (1926).

A local zoning ordinance cannot interfere with the legislature's conferral of the power of condemnation to a private entity.

Missouri Pac. R.R. v. 55 Acres of Land, 947 F. Supp. 1301 (E.D. Ark. 1996).

Intersections.

When the right of railroad to intersect the line of another railroad is raised, the remedy must be sought in a court of equity. *Saint Louis, I.M. & S. Ry. v. Smith & V.B. Ry.*, 104 Ark. 344, 148 S.W. 531 (1912).

Joint Use of Track.

The railroad commission does not have the power to determine the rights of two railroads under a contract relating to the joint use and maintenance of a wye track. *St. Louis-San Francisco Ry. v. Missouri P.R.R.*, 156 Ark. 259, 245 S.W. 806 (1922).

Regulation.

It is the state's policy to regulate transportation agencies. *Southeast Arkansas Freight Lines v. Arkansas Corp. Comm'n*, 204 Ark. 1023, 166 S.W.2d 262 (1942).

Spurs.

The General Assembly has the power to require a railroad to build a spur track, and may delegate the authority to the

railroad commission. *Saint Louis, I.M. & S. Ry. v. State*, 99 Ark. 1, 136 S.W. 938 (1911).

A spur, owned and controlled by a railroad, may be used by the public when needed, since a spur is a part of the railroad system. *Conway Oil Co. v. Gibson Oil Co.*, 175 Ark. 905, 1 S.W.2d 60 (1927).

§ 2. Offices of common carriers.

Every railroad, canal or turnpike corporation operated, or partly operated in this State, shall maintain one office therein, where transfers of its stock shall be made and where its books shall be kept for inspection by any stockholder or creditor of such corporation; in which shall be recorded the amount of capital stock subscribed or paid in, and the amounts owned by them respectively, the transfer of said stock, and the names and places of residence of the officers.

§ 3. Equal right to transportation.

All individuals, associations and corporations shall have equal right to have persons and property transported over railroads, canals and turnpikes; and no undue or unreasonable discrimination shall be made in charges for, or in facilities for transportation of freight or passengers within the State, or coming from, or going to any other State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station. But excursion and commutation tickets may be issued at special rates.

CASE NOTES**Picketing in Labor Dispute.**

This section has no application to prevent picketing on ground that railroad is prevented from supplying service because railroad employees refused to cross picket

line and enter struck plant. *Missouri Pac. R.R. v. United Brick & Clay Workers Union*, 218 Ark. 707, 238 S.W.2d 945 (1951').

§ 4. Parallel or competing lines.

No railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad, canal or corporation shall consolidate the stock, property or franchises of such corporation with, or lease, or purchase the works or franchises of, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line, nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines

shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

§ 5. Officers, agents and employees of carrier — Personal interest in contracts prohibited.

No president, director, officer, agent or employee of any railroad or canal company, shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company. Nor in any arrangement which shall afford more advantageous terms, or greater facilities than are offered or accorded to the public. And all contracts and arrangements in violation of this section shall be void.

§ 6. Discrimination by carriers.

No discrimination in charges, or facilities for transportation, shall be made between transportation companies and individuals, or in favor of either by abatement, drawback or otherwise; and no railroad or canal company, or any lessee, manager or employee thereof shall make any preferences in furnishing cars or motive power.

CASE NOTES

ANALYSIS

Furnishing of cars.
Picketing in labor dispute.
Prompt delivery.
Rates.
—Discriminatory.
—Operation at loss.
—Reduction.

Furnishing of Cars.

A railroad may make reasonable regulations for the reception of commodities to be carried, and need not provide cars to a shipper which the shipper desires to load with coal on the sidetrack of the railroad. *Choctaw, O. & G. Ry. v. State*, 73 Ark. 373, 84 S.W. 502, 92 S.W. 26 (1904).

Picketing in Labor Dispute.

This section has no application to prevent picketing on ground that railroad is prevented from supplying service because railroad employees refused to cross picket line and enter struck plant. *Missouri Pac. R.R. v. United Brick & Clay Workers Union*, 218 Ark. 707, 238 S.W.2d 945 (1951').

Prompt Delivery.

The General Assembly may enforce the

prompt delivery of goods on the payment or tender of freight charges by making a railroad which refuses to deliver liable for damages equal to the freight charges for each day withheld. *Little Rock & F.S.R.R. v. Hanniford*, 49 Ark. 291, 5 S.W. 294 (1887).

Rates.

—Discriminatory.

A carrier cannot contract to haul lumber at a rate fixed by the parties in return for a grant of a right of a way and aid to the carrier to obtain a charter. *Bryant Lumber Co. v. Fourche River Lumber Co.*, 124 Ark. 313, 187 S.W. 455 (1916).

—Operation at Loss.

The railroad commission may order a railroad to operate trains, even at a pecuniary loss, but such orders must be reasonable. *Railroad Comm'n v. Saline River Ry.*, 119 Ark. 239, 177 S.W. 896 (1915).

—Reduction.

A charter provision that the carrying charge for passengers shall not exceed five cents per mile is not a contract that the fare will not be reduced below that amount. Such a provision would not pass

to a purchaser at a mortgage sale in any event. *Dow v. Beidelman*, 49 Ark. 325, 5 S.W. 297 (1887), *aff'd*, 125 U.S. 680, 8 S. Ct. 1028, 31 L. Ed. 841 (1888).

§ 7. Free passes.

The General Assembly shall prevent by law the granting of free passes by any railroad or transportation company to any officer of this State, legislative, executive or judicial.

Cross References. Free transportation permitted for certain officers, §§ 6-64-105, 27-65-127. Passes and free transportation generally, § 23-4-801 *et seq.*

§ 8. Condition of remission of forfeitures.

The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, except on condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

§ 9. Right of eminent domain.

The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public — use the same as the property of individuals.

CASE NOTES

Condemnation Procedure.

The legislature may provide the procedure for the condemnation of private prop-

erty for public use within constitutional bounds. *Helena v. Arkansas Util. Co.*, 208 Ark. 442, 186 S.W.2d 783 (1945).

§ 10. Regulation of carriers.

The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and excessive charges by railroads, canals and turn-pike companies for transporting freight and passengers, and shall provide for enforcing such laws by adequate penalties and forfeitures, and shall provide for the creation of such offices and commissions and vest in them such authority as shall be necessary to carry into effect the powers hereby conferred. [As amended by Const. Amend. 2.]

Publisher's Notes. Ark. Const. Amend. 2 added the last clause.

RESEARCH REFERENCES

Ark. L. Rev. The Growth of Utility Regulation in Arkansas: A Functional Survey, 21 Ark. L. Rev. 539.

CASE NOTES

ANALYSIS

Railroad commission.
State policy.

Railroad Commission.

The amendment of this section authorizes the creation of the railroad commission. *Saint Louis, I.M. & S. Ry. v. State*, 99 Ark. 1, 136 S.W. 938 (1911).

An act abolishing the railroad commission and transferring its powers and duties to the Arkansas corporation commission is valid. *Helena Water Co. v. Helena*, 140 Ark. 597, 216 S.W. 26 (1919).

The railroad commission has jurisdiction over the subject matter of abolishing station agencies as well as creating them

and has the implied power to formulate rules of procedure for hearing of applications by a railroad to abandon an agency. *Kansas City S. Ry. v. Arkansas R.R. Comm'n*, 175 Ark. 425, 299 S.W. 761 (1927).

State Policy.

It is the state's policy to regulate transportation agencies, and the public interest is the primary consideration of the corporation commission in fixing rates. *South-east Arkansas Freight Lines v. Arkansas Corp. Comm'n*, 204 Ark. 1023, 166 S.W.2d 262 (1942).

Cited: *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

§ 11. Movable property of carriers subject to execution.

That rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals, and the General Assembly shall pass no law exempting any such property from execution and sale.

§ 12. Damages by railroads to persons and property — Liability.

All railroads, which are now, or may be hereafter built, and operated either in whole or in part, in this State, shall be responsible for all damages to persons and property, under such regulations as may be prescribed by the General Assembly.

CASE NOTES

ANALYSIS

Allegation of negligence.
Injuries to employees.
Injuries to passengers.

Allegation of Negligence.

The plaintiff, in a suit against a bus company or any other person for injuries, except against a railroad company for injury caused by the running of a train, must allege facts constituting negligence. *Wade v. Brocato*, 192 Ark. 826, 95 S.W.2d 94 (1936).

Injuries to Employees.

A railroad operating in the state is lia-

ble in tort to an employee for injuries received in the state through the negligence of a co-employee who was not a fellow servant. *Kansas City, F.S. & M.R.R. v. Becker*, 67 Ark. 1, 153 S.W. 406 (1899).

Injuries to Passengers.

A railroad is liable for injuries to a passenger injured through the road's negligence, although the passenger was riding on a free pass stipulating that the passenger assumed all risks. *Saint Louis, I.M. & S. Ry. v. Pitcock*, 82 Ark. 441, 101 S.W. 725 (1907).

§ 13. Annual reports of railroads.

The directors of every railroad corporation shall annually make a report under oath to the Auditor of Public Accounts, of all of their acts and doings, which reports shall include such matters relating to railroads as may be prescribed by law, and the General Assembly shall pass laws enforcing, by suitable penalties, the provisions of this section.

ARTICLE 18**JUDICIAL CIRCUITS**

Judicial Circuits

Until otherwise provided by the General Assembly, the Judicial Circuits shall be composed of the following counties:

First — Phillips, Lee, St. Francis, Prairie, Woodruff, White and Monroe. Second — Mississippi, Crittenden, Cross, Poinsett, Craighead, Greene, Clayton and Randolph. Third — Jackson, Independence, Lawrence, Sharp, Fulton, Izard, Stone and Baxter. Fourth — Marion, Boone, Searcy, Newton, Madison, Carroll, Benton and Washington. Fifth — Pope, Johnson, Franklin, Crawford, Sebastian, Sarber and Yell. Sixth — Lonoke, Pulaski, Van Buren and Faulkner. Seventh — Grant, Hot Springs, Garland, Perry, Saline and Conway. Eighth — Scott, Montgomery, Polk, Howard, Sevier, Little River, Pike and Clark. Ninth — Hempstead, Lafayette, Nevada, Columbia, Union, Ouachita and Calhoun. Tenth — Chicot, Drew, Ashley, Bradley, Dorsey and Dallas. Eleventh — Desha, Arkansas, Lincoln and Jefferson.

Terms of Courts

Until otherwise provided by the General Assembly, the Circuit Courts shall be begun and held in the several counties as follows:

First Circuit

White — First Monday in February and August. Woodruff — Third Monday in February and August. Prairie — Second Monday after the third Monday in February and August. Monroe — Sixth Monday after the third Monday in February and August. St. Francis — Eighth Monday after the third Monday in February and August. Lee — Tenth Monday after the third Monday in February and August. Phillips — Twelfth Monday after the third Monday in February and August.

Second Circuit

Mississippi — First Monday in March and September. Crittenden — Second Monday in March and September. Cross — Second Monday after the second Monday in March and September. Poinsett — Third Monday after the second Monday in March and September. Craighead

— Fourth Monday after the second Monday in March and September. Greene — Sixth Monday after the second Monday in March and September. Clayton — Seventh Monday after the second Monday in March and September. Randolph — Ninth Monday after the second Monday in March and September.

Third Circuit

Jackson — First Monday in March and September. Lawrence — Fourth Monday in March and September. Sharp — Second Monday after the fourth Monday in March and September. Fulton — Fourth Monday after the fourth Monday in March and September. Baxter — Sixth Monday after the fourth Monday in March and September. Izard — Seventh Monday after the fourth Monday in March and September. Stone — Ninth Monday after the fourth Monday in March and September. Independence — Tenth Monday after the fourth Monday in March and September.

Fourth Circuit

Marion — Second Monday in February and August. Boone — Third Monday in February and August. Searcy — Second Monday after the third Monday in February and August. Newton — Third Monday after the third Monday in February and August. Carroll — Fourth Monday after the third Monday in February and August. Madison — Fifth Monday after the third Monday in February and August. Benton — Sixth Monday after the third Monday in February and August. Washington — Eighth Monday after the third Monday in February and August.

Fifth Circuit

Greenwood District, Sebastian county — Third Monday in February and August. Fort Smith District, Sebastian county — First Monday after the fourth Monday in February and August. Crawford county — Fourth Monday after the fourth Monday in February and August. Franklin county — Sixth Monday after the fourth Monday in February and August. Sarber county — Eighth Monday after the fourth Monday in February and August. Yell county — Tenth Monday after the fourth Monday in February and August. Pope county — Twelfth Monday after fourth Monday in February and August. Johnson county — Fourteenth Monday after the fourth Monday in February and August.

Sixth Circuit

In the county of Pulaski on the first Monday in February, and continue twelve weeks if the business of said court require it. In the county of Lonoke on the first Monday succeeding the Pulaski Court, and continue two weeks if the business of said Court require it. In the county of Faulkner on the first Monday after the Lonoke Court, and

continue two weeks if the business of said Court require it. In the county of Van Buren on the first Monday after the Faulkner Court, and continue two weeks if the business of said Court require it.

Fall Term, Sixth Circuit

In the county of Pulaski on the first Monday in October, and continue seven weeks if the business of said Court require it. In the county of Lonoke on the first Monday next after the Pulaski Court and continue two weeks if the business of said court require it. In the county of Faulkner on the first Monday after the Lonoke Court, and continue one week if the business of said Court require it. In the County of Van Buren on the first Monday after the Faulkner Court, and continue one week if the business of said Court require it.

Seventh Circuit

Hot Spring — Second Monday in March and September. Grant — Third Monday in March and September. Saline — Fourth Monday in March and September. Conway — Second Monday after fourth Monday in March and September. Perry — Fourth Monday after the fourth Monday in March and September. Garland — Fifth Monday after the fourth Monday in March and September.

Eighth Circuit

Montgomery — First Monday in February and August. Scott — First Monday after the first Monday in February and August. Polk — Second Monday after the first Monday in February and August. Sevier — Third Monday after the first Monday in February and August. Little River — Fifth Monday after the first Monday in February and August. Howard — Seventh Monday after the first Monday in February and August. Pike — Eighth Monday after the first Monday in February and August. Clark — Ninth Monday after the first Monday in February and August.

Ninth Circuit

Calhoun — First Monday in March and September. Union — Second Monday after the first Monday in March and September. Columbia — Fourth Monday after the first Monday in March and September. Lafayette — Sixth Monday after the first Monday in March and September. Hempstead — Eighth Monday after the first Monday in March and September. Nevada — Eleventh Monday after the first Monday in March and September. Ouachita — Thirteenth Monday after the first Monday in March and September.

Tenth Circuit

Dorsey — Third Monday in February and August. Dallas — First Monday in March and September. Bradley — Second Monday in March

and September. Ashley — Third Monday in March and September. Drew — Second Monday after the third Monday in March and September. Chicot — Fourth Monday after the third Monday in March and September.

Eleventh Circuit

In the county of Desha on the first Monday in March and September. In the county of Arkansas on the fourth Monday in March and September. In the county of Lincoln on the third Monday after the fourth Monday in March and September. In the county of Jefferson on the sixth Monday after the fourth Monday in March and September.

Cross References. Circuit courts,
§§ 16-13-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. The Arkansas Judiciary at the Crossroads, 17 Ark. L. Rev. 259.

CASE NOTES

Number of Counties in District.

There being no express requirement that a district contain more than one county, statute transferring Montgomery county to another district, leaving Gar-

land as the only county in the eighteenth judicial district, was not invalid. *Cockrell v. Dobbs*, 238 Ark. 348, 381 S.W.2d 756 (1964).

ARTICLE 19

MISCELLANEOUS PROVISIONS

SECTION.

1. Atheists disqualified from holding office or testifying as witness.
2. Dueling.
3. Elected or appointed officers — Qualifications of an elector required.
4. Residence of officers.
5. Officers — Holding over.
6. Dual office holding prohibited.
7. Residence — Temporary absence not to forfeit.
8. Deduction from salaries.
9. Permanent state offices — Creation restricted.
10. Election returns — State officers.
11. Salaries of state officers — Increase or decrease during term prohibited — Fees.

SECTION.

12. Receipts and expenditures to be published.
13. Maximum lawful rates of interest.
14. Lotteries prohibited.
15. [Repealed.]
16. Contracts for public buildings or bridges.
17. Digest of laws — Publication.
18. Safety of miners and travelers.
19. Deaf and dumb and blind and insane persons.
20. Oath of office.
21. Sureties on official bonds — Qualifications — Bonding companies.
22. Constitutional amendments.
23. [Repealed.]

SECTION.

24. Election contests.

25. Seal of state.

26. Officers eligible to executive or judicial office.

SECTION.

27. Local improvements — Municipal assessments.

RESEARCH REFERENCES

UALR L.J. Niswanger, A Practitioner's Guide to Challenging and Defending Legislatively Proposed Constitutional

Amendments in Arkansas, 17 UALR L.J. 765.

§ 1. Atheists disqualified from holding office or testifying as witness.

No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any Court.

Cross References. Religious liberty, Ark. Const., Art. 2, §§ 24-26.

RESEARCH REFERENCES

Ark. L. Rev. Theory of Testimonial Competency and Privilege, 4 Ark. L. Rev. 377.

UALR L.J. Arkansas Law Survey, Jeffrey, Nelson, Nunnally and Robertson, Constitutional Law, 7 UALR L.J. 179.

CASE NOTES

ANALYSIS

Belief in punishment without God.

Evidence of belief.

Lack of standing.

Belief in Punishment without God.

One who believes that he is punished by an omnipotent Supreme Being for his acts but who does not believe in God is competent to testify. *Mueller v. Coffman*, 132 Ark. 45, 200 S.W. 136 (1918).

Authorship of a verse of an atheistic trend by a witness is competent evidence to show incompetency as a witness. *Mueller v. Coffman*, 132 Ark. 45, 200 S.W. 136 (1918).

Evidence of Belief.

A pamphlet written by a proposed wit-

ness is proper evidence to establish the fact that he believes in the existence of a God. *Farrell v. State*, 111 Ark. 180, 163 S.W. 768 (1914).

Lack of Standing.

Where two atheist plaintiffs in challenging the constitutionality of this section merely alleged possible future injury, along with the allegation that they had suffered adverse psychological consequences as a result of the continued presence of this section in the Constitution, the plaintiffs failed to show the requisite injury in fact necessary to give them standing, and, therefore, the trial court properly dismissed their action. *Flora v. White*, 692 F.2d 53 (8th Cir. 1982).

§ 2. Dueling.

No person who may hereafter fight a duel, assist in the same as

second, or send, accept, or knowingly carry a challenge therefor, shall hold any office in the State, for a period of ten years; and may be otherwise punished as the law may prescribe.

§ 3. Elected or appointed officers — Qualifications of an elector required.

No persons shall be elected to, or appointed to fill a vacancy in, any office who does not possess the qualifications of an elector.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of constitutional and statutory “term limits” provisions. 112 ALR 5th 1.

Ark. L. Rev. Wills, Constitutional Crisis: Can the Governor (or Other State

Officeholder) Be Removed from Office in a Court Action after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

UALR L.J. Annual Survey of Caselaw, Constitutional Law, 24 UALR L.J. 905.

CASE NOTES

ANALYSIS

Elector.

Notary public.

Registered voter.

Residence.

—Multidistrict residence.

—Municipal judges.

Elector.

This section requires nothing more than that the elected person be an “elector.” *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

Notary Public.

Only qualified electors have the right to hold the office of notary public. State ex rel. Gray v. Hodges, 107 Ark. 272, 154 S.W. 506 (1913).

Registered Voter.

A special judge must be a qualified elector, but not necessarily a registered voter. *White v. Reagan*, 25 Ark. 622 (1869).

Residence.

A city marshal who was not a resident of the city was not qualified for such office and although appointed by the city council under color of right, he was a de facto officer and not entitled to the emoluments. *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948).

Where the alderman had moved to California and voted there, even though he claimed he had never changed his residence from Arkansas, there was substan-

tial evidence to support the judgment that he was ineligible as alderman because he was not a qualified elector of the city. *Charisse v. Eldred*, 252 Ark. 101, 477 S.W.2d 480 (1972).

The definition of legal residence in § 14-14-1306 to mean domicile as evidenced by the intent to make a residence a fixed and permanent home, does not alter this section, as interpreted by the supreme court. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

In the context of a school election, the term “residence” means the place where the candidate’s house was physically located. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

Intent is relevant to the question of domicile when a party has more than one residence or has departed from a residence for a temporary stay elsewhere with the intent of returning but it has far less to do with the concept of residency. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

—Multidistrict Residence.

Even though § 6-13-616, purports to make a person whose residential property spans parts of two school districts eligible to serve on the board of either, it did not change the qualified elector requirement of this section, which requires residence in the political subdivision to be served by the elected official. Nor could it alter the more straightforward residency require-

ment of § 4 of this article. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

—Municipal Judges.

Residency in the City of Pine Bluff is required to be eligible as a nominee for Pine Bluff second-division municipal judge, notwithstanding that § 16-17-120 states a general intent to abandon the city-residency requirement for municipal-court-judge candidates and electors, since § 16-17-108 specifically states that only

the qualified electors of the city of Pine Bluff may elect an additional municipal judge for the Second Division of the Pine Bluff Municipal Court, and this section provides that one must possess the qualifications of an elector to be elected to an office. *Benton v. Gunter*, 342 Ark. 543, 29 S.W.3d 719 (2000).

Cited: *White v. McHughes*, 97 Ark. 221, 133 S.W. 1026 (1911); *Trussell v. Fish*, 202 Ark. 956, 154 S.W.2d 587 (1941).

§ 4. Residence of officers.

All civil officers for the State at large shall reside within the State, and all district, county and township officers within their respective districts, counties and townships, and shall keep their offices at such places therein as are now, or may hereafter be required by law.

CASE NOTES

ANALYSIS

Boundaries changed.
Determination of residency.
Improvement district directors.
Moving from district.
Multidistrict residences.
Nomination for election.

Boundaries Changed.

A sheriff of a county regularly elected, commissioned, and qualified for the office, but who became disqualified as a resident of the county when his residence was shifted to another county by act of General Assembly, did not thereby forfeit the office held. *State v. Hixon*, 27 Ark. 398 (1872).

Where, in an action challenging the residency qualifications of a candidate who had won an election for justice of the peace in District No. 11, the evidence showed that the candidate had resided in District No. 11 for many years until her place of residence was changed to District No. 10 by a quirk of redistricting which took place shortly before her election and that the candidate, after learning of the change, moved into an apartment within District No. 11, set up housekeeping, changed her voter registration to the new address, obtained a telephone at the apartment, ate most of her meals at the apartment, and began making the apartment her home, the evidence supported the finding that the candidate was a resi-

dent of District No. 11. *Brick v. Simonetti*, 279 Ark. 446, 652 S.W.2d 23 (1983).

Determination of Residency.

In determining the residency of a candidate and whether he is qualified to run for office from a certain district, the conduct and actions of the candidate regarding his residency must be in conformity with his stated intent, and both the intent and conduct of the candidate must be considered as factors in determining his residency. *Brick v. Simonetti*, 279 Ark. 446, 652 S.W.2d 23 (1983).

Intent is relevant to the question of domicile when a party has more than one residence or has departed from a residence for a temporary stay elsewhere with the intent of returning but it has far less to do with the concept of residency. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

Improvement District Directors.

A member of the board of directors of a levee district is not a county officer and may hold such office of director although he does not reside in the levee district. *State ex rel. Going v. Higgenbotham*, 84 Ark. 537, 106 S.W. 484 (1908).

Moving from District.

A notary public who removes permanently from the county in which he was appointed is no longer either a *de jure* officer or a *de facto* officer. *Lanier v.*

Norfleet, 156 Ark. 216, 245 S.W. 498 (1922).

Multidistrict Residences.

Even though § 6-13-616, purported to make a person whose residential property spans parts of two school districts eligible to serve on the board of either, it did not change the qualified elector requirement of § 3 of this article, which requires residence in the political subdivision to be served by the elected official. Nor could it alter the more straightforward residency

requirement of this section. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

Nomination for Election.

A party nominee for justice of the peace, who was a qualified elector and a resident of the district at the time of his nomination, was qualified as a candidate in the general election, even though the nominee had temporarily moved outside his district into a house he owned as investment property. *Booth v. Smith*, 261 Ark. 838, 552 S.W.2d 19 (1977).

§ 5. Officers — Holding over.

All officers shall continue in office after the expiration of their official terms, until their successors are elected and qualified.

CASE NOTES

ANALYSIS

Effect of holding over.

Election void.

Failure of successor to qualify.

New offices.

Postponement of election.

Special elections prohibited.

Effect of Holding Over.

The term of a revenue collector continues until his successor is elected and qualified; and revenue collected up to the qualification of his successor is collected during his term. *Haley v. Petty*, 42 Ark. 392 (1883).

A constable holding over from his preceeding term, when no successor has been elected, is at least a de facto officer so that an execution sale conducted by him is not void. *Bank of Almyra v. Laur*, 122 Ark. 486, 184 S.W. 39 (1916).

Election Void.

Even though the election of a county treasurer to succeed himself was void, he may hold the office until his successor is elected and qualified, and the governor can not vacate the office and fill it by appointment. *Hill v. Goodwin*, 82 Ark. 341, 101 S.W. 752 (1907).

Where the election of a justice of the peace is void, the former justice may hold over until a successor is qualified and may contest the eligibility of the usurper to hold the office. *Faulkner v. Woodard*, 203 Ark. 254, 156 S.W.2d 243 (1941).

Failure of Successor to Qualify.

This section declares in substance that in the event one elected to office fails to qualify, the office is not in fact vacant — it is filled by the incumbent until his successor is elected and qualified. *Justice v. Campbell*, 241 Ark. 802, 410 S.W.2d 601 (1967).

New Offices.

Upon the creation of a new judicial circuit the term of the judge elected to fill the office expires at the election of the judge at the next general election. *Smith v. Askew*, 48 Ark. 82, 2 S.W. 349 (1886).

Postponement of Election.

Postponing the date of the general election so as to correspond in the future so as to correspond in the future with the date of the national election merely postpones the commencement of the terms of office of the officers then elected. *Hendricks v. Hodges*, 122 Ark. 82, 182 S.W. 538 (1916).

Under the act postponing the time of the general election, the time of appointment of a county examiner who is appointed by the county court at its first term after election is delayed, and the incumbent holds over till his successor is qualified. *Barnett v. Sutterfield*, 129 Ark. 461, 196 S.W. 470 (1917).

The General Assembly has the power to readjust the commencement of official terms within reasonable limits. *Hutcherson v. Pitts*, 170 Ark. 248, 278 S.W. 639 (1926).

Special Elections Prohibited.

Sheriff elected at the general election died before January first; therefore, person appointed by the governor to serve out the preceding term when the incumbent sheriff resigned would serve until a new sheriff could be elected at the next general

election, since the statute providing for special elections was unconstitutional. *McCraw v. Pate*, 254 Ark. 357, 494 S.W.2d 94 (1973).

Cited: *Gay v. Brooks*, 251 Ark. 565, 473 S.W.2d 441 (1971).

§ 6. Dual office holding prohibited.

No person shall hold or perform the duties of more than one office in the same department of the government at the same time, except as expressly directed or permitted by this Constitution.

Cross References. Right of certain officers to hold executive or judicial office, Ark. Const., Art. 19, § 26.

CASE NOTES

ANALYSIS

City police chief.
Municipal judicial office.

City Police Chief.

The constitutional prohibition against holding two offices at one time refers only to state officers, and a chief of police of a city may hold the position of deputy sheriff. *Peterson v. Culpepper*, 72 Ark. 230, 79 S.W. 783 (1904).

Municipal Judicial Office.

The Constitution forbids the holding of more than one state office in the same department, but does not forbid the holding of a state judicial office and the holding of a municipal judicial office. *State ex rel. Murphy v. Townsend*, 72 Ark. 180, 79 S.W. 782 (1904).

§ 7. Residence — Temporary absence not to forfeit.

Absence on business of the State, or of the United States, or on a visit, or on necessary private business, shall not cause a forfeiture of residence once obtained.

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey, Jeffrey, Nelson, Nunnally and Robertson, Constitutional Law, 7 UALR L.J. 179.

CASE NOTES

Military Service.

A soldier or sailor temporarily stationed in the line of duty at a particular place does not change his domicile. A new domicile may only be acquired by acquiring a

residence and an intent to make it his home. *Central Manufacturer's Mut. Ins. Co. v. Friedman*, 213 Ark. 9, 209 S.W.2d 102 (1948).

§ 8. Deduction from salaries.

It shall be the duty of the General Assembly to regulate, by law in

what cases, and what, deductions from the salaries of public officers shall be made for neglect of duty in their official capacity.

§ 9. Permanent state offices — Creation restricted.

The General Assembly shall have no power to create any permanent State Office, not expressly provided for by this Constitution.

CASE NOTES

ANALYSIS

Constitutional office.
County offices.
Police power.
Temporary offices.

Constitutional Office.

An act creating a permanent office of superintendent of the school for the blind does not violate this provision since the Constitution requires provisions by law for the support of the deaf, dumb and blind. *Lucas v. Futrall*, 84 Ark. 540, 106 S.W. 667 (1907); *Hickenbottom v. McCain*, 207 Ark. 485, 181 S.W.2d 226, cert. denied, 323 U.S. 777, 65 S. Ct. 189, 89 L. Ed. 621 (1944).

County Offices.

A county superintendent of schools is not a state officer within the constitutional prohibition of permanent state officers not provided for in the Constitution. *Little River County Bd. of Educ. v. Ashdown Special School Dist.*, 156 Ark. 549, 247 S.W. 70 (1923).

The office of county auditor is not a state office within the constitutional prohibition of permanent state offices not provided for in the Constitution. *Marshall v. Holland*, 168 Ark. 449, 270 S.W. 609 (1925).

Police Power.

The employment security division created in the department of labor is an administrative agency created under the police power and does not violate the constitutional prohibition against any perma-

nent state office not provided for in the Constitution. *Hickenbottom v. McCain*, 207 Ark. 485, 181 S.W.2d 226, cert. denied, 323 U.S. 777, 65 S. Ct. 189, 89 L. Ed. 621 (1944).

Temporary Offices.

The creation of a state office by the General Assembly implies a determination that the office is temporary, and the creation of a state banking department for 12 years is not in violation of the Constitution. *Green v. Merchants' & Mechanics' Bank*, 114 Ark. 212, 169 S.W. 802 (1914).

The General Assembly has the power to determine whether an office created is temporary or permanent, and the office of registrar of vital statistics created without specifying a term is presumed to be temporary. *Fort Smith Dist. v. Eberle*, 125 Ark. 350, 188 S.W. 821 (1916).

The state highway acts are not void because the offices created are not limited in time of existence. *Bush v. Martineau*, 174 Ark. 214, 295 S.W. 9 (1927).

The state board of education is not permanent but is subject to the will of the legislative branch. *State ex rel. Holt v. State Bd. of Educ.*, 195 Ark. 222, 112 S.W.2d 18 (1937).

An office created by the General Assembly is subject to the legislative will and may be abolished at any time, and is temporary in this sense. *Hickenbottom v. McCain*, 207 Ark. 485, 181 S.W.2d 226, cert. denied, 323 U.S. 777, 65 S. Ct. 189, 89 L. Ed. 621 (1944).

§ 10. Election returns — State officers.

Returns for all elections, for officers who are to be commissioned by the Governor, and for members of the General Assembly, except as otherwise provided by this Constitution, shall be made to the Secretary of State.

§ 11. Salaries of state officers — Increase or decrease during term prohibited — Fees.

The Governor, Secretary of State, Auditor, Treasurer, Attorney-General, Judges of the Supreme Court, Judges of the Circuit Court, Commissioner of State Lands, and Prosecuting Attorneys, shall each receive a salary to be established by law, which shall not be increased or diminished during their respective terms, nor shall any of them, except the Prosecuting Attorneys, after the adoption of this Constitution, receive to his own use any fees, costs, perquisites of office, or other compensation; and all fees that may hereafter be payable by law, for any service performed by any officer mentioned in this section, except Prosecuting Attorneys, shall be paid in advance into the State Treasury; Provided, That the salaries of the respective officers herein mentioned shall never exceed per annum:

For Governor, the sum of \$4,000

For Secretary of State, the sum of \$2,500

For Treasurer of State, the sum of \$3,000

For Auditor of State, the sum of \$3,000

For Attorney-General, the sum of \$2,500

For Commissioner of State Lands, the sum of \$2,500

For the Judges of the Supreme Court, each, the sum of \$4,000

For Judges of the Circuit Courts, and Chancellors, each, the sum of \$3,000

For Prosecuting Attorneys, the sum of \$400

And provided further, That the General Assembly shall provide for no increase of salaries of its members which shall take effect before the meeting of the next General Assembly.

Publisher's Notes. The second paragraph of this section has probably been superseded by Ark. Const. Amends. 21, § 2; 43, § 1; and 56, § 2.

CASE NOTES

ANALYSIS

Circuit judge.

Legislative discretion.

Prosecuting attorneys.

Circuit Judge.

The circuit judge is a state officer and the General Assembly may not delegate the power to impose a tax for payment of the judge, a state function, to the county court. *Cotham v. Coffman*, 111 Ark. 108, 163 S.W. 1183 (1914).

The payment of the salaries of circuit judges is limited to the revenue of the state. *Cotham v. Coffman*, 111 Ark. 108, 163 S.W. 1183 (1914).

Legislative Discretion.

In a case where an office is created by the Constitution, but the compensation is left to legislative discretion, the compensation may be increased or decreased so as to affect the incumbent. *Humphry v. Sadler*, 40 Ark. 100 (1882).

Prosecuting Attorneys.

Prosecuting Attorneys are constitutional state officers acting in a quasi-judicial capacity. *Smith v. Page*, 192 Ark. 342, 91 S.W.2d 281 (1936).

§ 12. Receipts and expenditures to be published.

An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom and on what account, shall, from time to time, be published as may be prescribed by law.

CASE NOTES

ANALYSIS

In general.
Expenditures.

In General.

This section requires publication of detailed statements of receipts and expenses of the public money. *Jeffery v. Trevathan*, 215 Ark. 311, 220 S.W.2d 412 (1949); *Clark v. Hambleton*, 235 Ark. 467, 360 S.W.2d 486 (1962).

Expenditures.

Broadly, “expenditures” means any laying out or disbursement of money; this

implies the spending of money already in the state’s hands rather than the deduction of monies never counted as part of the state’s budget. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

The term “expenditures” does not include the shrinkage allowance permitted to motor fuel distributors; the deduction permitted by statute for “shrinkage allowance” is not an appropriation of public money within the framework of this section; it is merely a deduction, nothing more. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

§ 13. Maximum lawful rates of interest.

(a) General Loans:

(i) The maximum lawful rate of interest on any contract entered into after the effective date hereof shall not exceed five percent (5%) per annum above the Federal Reserve Discount Rate at the time of the contract.

(ii) All such contracts having a rate of interest in excess of the maximum lawful rate shall be void as to the unpaid interest. A person who has paid interest in excess of the maximum lawful rate may recover, within the time provided by law, twice the amount of interest paid. It is unlawful for any person to knowingly charge a rate of interest in excess of the maximum lawful rate in effect at the time of the contract, and any person who does so shall be subject to such punishment as may be provided by law.

(b) Consumer Loans and Credit Sales: All contracts for consumer loans and credit sales having a greater rate of interest than seventeen percent (17%) per annum shall be void as to principal and interest and the General Assembly shall prohibit the same by law.

(c) Definitions: As used herein, the term:

(i) “consumer loans and credit sales” means credit extended to a natural person in which the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

(ii) “Federal Reserve Discount Rate” means the Federal Reserve discount Rate on ninety-day commercial paper in effect in the Federal Reserve Bank in the Federal Reserve District in which Arkansas is located.

(d) Miscellaneous:

(i) The rate of interest for contracts in which no rate of interest is agreed upon shall be six percent (6%) per annum.

(ii) The provisions hereof are not intended and shall not be deemed to supersede or otherwise invalidate any provisions of federal law applicable to loans or interest rates including loans secured by residential real property.

(iii) The provisions hereof revoke all provisions of State law which establish the maximum rate of interest chargeable in the State or which are otherwise inconsistent herewith. [As amended by Const. Amend. 60.]

Publisher's Notes. Prior to amendment, this section read: "All contracts for a greater rate of interest than ten per centum per annum shall be void as to principal and interest, and the General

Assembly shall prohibit the same by law; but when no rate of interest is agreed upon, the rate shall be six per centum per annum."

RESEARCH REFERENCES

Ark. L. Notes. Matthews, Interest Rate Provisions and the Negotiability of Commercial Paper, 1986 Ark. L. Notes 37.

Brill, A Primer on Judgment and Pre-Judgment Interest in Arkansas, 1989 Ark. L. Notes 1.

Ark. L. Rev. Usury — Constitutional Interdiction Applies to Sales of Merchandise on Credit, 12 Ark. L. Rev. 202.

Clark, The Close-Connectedness Doctrine: Preserving Consumer Rights in Credit Transactions, 33 Ark. L. Rev. 490.

Clark, Interpretation of the Arkansas Usury Law: A Continuation of a Conservative Trend, 33 Ark. L. Rev. 518.

Comments, Usury: Issues in Calculation, 34 Ark. L. Rev. 442.

Barrier, Usury in Arkansas: The 17% Solution, 37 Ark. L. Rev. 572.

Note, Commitment Fees — To Be, or Not to Be Considered Interest, 43 Ark. L. Rev. 875.

Note, Compound Pre-Judgment Interest as an Element of Just Compensation: *Wilson v. City of Fayetteville*, 47 Ark. L. Rev. 937.

Who's Getting Used in Arkansas: An Analysis of Usury, Check Cashing, and the Arkansas Check-cashers Act, 55 Ark. L. Rev. 149.

UALR L.J. Note: *Cagle v. Boyle Mortgage Co.*, 1 UALR L.J. 86.

Davis, Note: Commercial Law — Usury

— Lease Construed as Installment Sale, 2 UALR L.J. 112.

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CASE NOTES

Note. Many of the following annotations were decided prior to the 1982 amendment of this section which changed the lawful rate of interest in Arkansas.

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Constitutionality.

This section does not violate the due process clause, the equal protection clause, or the commerce clause of the Constitution of the United States. *Quinn-Moore v. Lambert*, 272 Ark. 324, 614 S.W.2d 230, appeal dismissed, 454 U.S. 805, 102 S. Ct. 78, 70 L. Ed. 2d 75 (1981); *Southwest Ark. Communications, Inc. v. Arrington*, 296 Ark. 141, 753 S.W.2d 267 (1988).

In General.

Transaction is to be judged at time contract is entered into, and not thereafter, when usurious interest is alleged. *General Contract Corp. v. Duke*, 223 Ark. 938, 270 S.W.2d 918 (1954); *Dillon v. Resolution Trust Corp.*, 306 Ark. 173, 811 S.W.2d 765 (1991).

Whether a transaction is usurious is a question arising under the Constitution and is therefore for the courts rather than for the legislature. *Bell v. Itek Leasing Corp.*, 262 Ark. 22, 555 S.W.2d 1 (1977).

It is not necessary for the interest to have been actually collected to violate the Constitution because the violation is in the charge. *A.Y. McDonald Mfg. Co. v. Shackelford*, 279 Ark. 304, 652 S.W.2d 8 (1983).

The Deceptive Trade Practices Act promotes the purposes of the Arkansas Constitution, Art. 19, § 13, by making its

provisions effective for consumers who are not likely to have financial means to obtain legal assistance to bring individual actions, who are unlikely to be aware of their legal rights, and who have no choice but to continue paying illegal rates. *State ex rel. Bryant v. R & A Inv. Co.*, 336 Ark. 289, 985 S.W.2d 299 (1999).

Construction.

Subsections (a) and (b) of this section are in no way conflicting, and each has its own penalty for violations. *Bishop v. Linkway Stores, Inc.*, 280 Ark. 106, 655 S.W.2d 426 (1983); *Southwest Ark. Communications, Inc. v. Arrington*, 296 Ark. 141, 753 S.W.2d 267 (1988).

This section is penal in nature. *McElroy v. Grisham*, 306 Ark. 4, 810 S.W.2d 933 (1991).

The language in this section is mandatory. *McElroy v. Grisham*, 306 Ark. 4, 810 S.W.2d 933 (1991).

This section is interpreted strictly. *Lotz v. Cromer*, 317 Ark. 250, 878 S.W.2d 367 (1994).

Applicability.

This section applies to the sale of merchandise on credit as well as loans of money or debts after they once become due. *Sloan v. Sears, Roebuck & Co.*, 228 Ark. 464, 308 S.W.2d 802 (1957).

The word "any" in subdivision (a)(i) means exactly what it says, and a consumer loan certainly falls within the category of any contract. *Bishop v. Linkway Stores, Inc.*, 280 Ark. 106, 655 S.W.2d 426 (1983).

This section controls interest in Arkansas to the extent it doesn't supersede or invalidate any provision of federal law applicable to loans or interest rates. *M. Nahas Co. v. First Nat'l Bank*, 739 F. Supp. 1338 (W.D. Ark. 1990), *aff'd*, 930 F.2d 608 (8th Cir. 1991).

Accounts.

Where interest at a higher rate than the legal rate is charged on an account, the account is void as to the items on which the usurious rate of interest was charged. *Hall Bros. Co. v. Johnson*, 111 Ark. 593, 164 S.W. 278 (1914).

Additional Charges.

A charge for service and storage under a separate agreement with the borrower did not constitute usury. *Hartzo v. Wilson*, 205 Ark. 965, 171 S.W.2d 956 (1943).

Loans conditioned upon collateral commitments for additional payments, bearing no substantial relationship to the primary contracts, but used as covers to conceal usurious interest, will be construed in their true deceptive aspect. *Hartzo v. Wilson*, 205 Ark. 965, 171 S.W.2d 956 (1943).

Charge of finance company to borrower for expense of credit reports and for expense of office force in making loan over and above the legal rate constitutes usury. *Winston v. Personal Fin. Co.*, 220 Ark. 580, 249 S.W.2d 315 (1952).

It does not matter whether the added charges are called a penalty, late charge, service charge, or some other name, for the courts will look to the facts of each case to determine whether the additional charges are a cloak for usury; and, if they are, the contract is usurious. *Bunn v. Weyerhaeuser Co.*, 268 Ark. 445, 598 S.W.2d 54 (1980).

Where a manufacturer seller began to add a penalty charge to the amount that a buyer owed on an open account in order to encourage the buyer to pay the account, the penalty constituted interest within the meaning of the usury law. *A.Y. McDonald Mfg. Co. v. Shackelford*, 279 Ark. 304, 652 S.W.2d 8 (1983).

A late charge which was a one-time penalty, of a fixed amount, which could have been entirely avoided by prompt payment did not render a contract usurious. *Tackett v. First Sav.*, 306 Ark. 15, 810 S.W.2d 927 (1991).

—Bank Credit Cards.

Annual membership fees charged holders of bank credit cards were not a cloak for usury but were valid consideration for services available to cardholders, even though cardholders chose not to use the cards except to make credit purchases. *Key v. Worthen Bank & Trust Co.*, 260 Ark. 725, 543 S.W.2d 496 (1976).

—Carrying Charges.

Where insurance and carrying charges are lumped together in contract and remainder, after deducting cost of insurance, amounts to more than maximum interest allowed by law, contract is usurious. *General Contract Corp. v. Duke*, 223 Ark. 938, 270 S.W.2d 918 (1954).

—Closing Costs.

Loan contract was usurious where lender deducted abstract cost and ex-

penses in securing loan on his real estate in order to make loan to borrower on cattle, since expense incurred was not for the benefit of the borrower. *Smith v. Eason*, 223 Ark. 747, 268 S.W.2d 389 (1954).

—Commitment Fee.

A “commitment fee” which was for the stated purpose of “the lender binding itself absolutely and unconstitutionally to make the loans and advances” was interest which, when added to the interest on the loan, made the agreement usurious. *Henslee v. Madison Guar. Sav. & Loan Ass’n*, 297 Ark. 183, 760 S.W.2d 842 (1988).

—Finance Charge.

Finance charge or time price differential is an amount exacted for the forbearance or extension of time for the payment of the principal balance; therefore, it is interest, as contemplated by this section. *Pacific Indus., Inc. v. Mountain Inn, Inc.*, 232 F. Supp. 801 (W.D. Ark. 1964).

—Insurance.

A contract containing a charge ostensibly for insurance, by a lender not an insurance company, for the repayment of a sum of money, is usurious where the total charges exceed the legal interest rate. *Doyle v. American Loan Co.*, 185 Ark. 233, 46 S.W.2d 803 (1932).

Charge for life and health insurance required of borrower from finance company was usurious. *Strickler v. State Auto Fin. Co.*, 220 Ark. 565, 249 S.W.2d 307 (1952).

In conditional sales contract the signing of voluntary election to purchase credit life and personal accident insurance did not render the contract usurious. *Lowrey v. General Contract Corp.*, 228 Ark. 685, 309 S.W.2d 736 (1958).

—Loan Guaranty Fee.

Where a bank charged a one-time loan guaranty fee of one percent on the portion of its loan guaranteed by the Small Business Administration, and the fee was ultimately ruled by the SBA not to be chargeable to the borrower, and was refunded to the borrower, the loan was not usurious. *Johnston v. Citizens Bank & Trust Co.*, 659 F.2d 865 (8th Cir. 1981).

—Service Charge.

Service charge to cover overhead costs of finance company in making loans was

usurious, and legislature could not validate charge. *Strickler v. State Auto Fin. Co.*, 220 Ark. 565, 249 S.W.2d 307 (1952).

Where a lender withheld a one percent service charge on a loan, the one percent service charge was interest in fact, and the loan was usurious since the interest rate exceeded the legal rate. *Fausett & Co. v. G & P Real Estate, Inc.*, 269 Ark. 481, 602 S.W.2d 669 (1980).

Since the service charges which exact a percentage of the balance due on an open account are interest charges subject to the Arkansas anti-usury provisions, a contract imposing a monthly service charge in excess of the legal rate on open accounts was usurious. *Tiffany Indus., Inc. v. Commercial Grain Bin Co.*, 714 F.2d 799 (8th Cir. 1983).

Where the service charge was a fixed one-time penalty of a set dollar amount which was assessed when the debtor failed to pay on time and the debtor had complete power to avoid the late charge merely by paying his or her monthly installment on time, the assessment for late charges was a legitimate penalty. In re *Borum*, 60 Bankr. 516 (Bankr. E.D. Ark. 1986).

—Title Insurance.

The charge for title insurance or title examination has traditionally been considered one of several legitimate charges by a lender that are not treated as a cloak for usury; these costs are not invariably excluded but have been traditionally upheld if they are reasonable, made in good faith and are paid to a third party for something appropriate to establishing or protecting the lender’s security. *Cooprider v. Security Bank*, 319 Ark. 75, 890 S.W.2d 240 (1994).

Advance Payment of Interest.

The taking of the highest legal rate of interest in advance amounts to usury, because the withholding of the legal rate on a one-year loan amounts to more than the constitutional limitation per annum. *Fausett & Co. v. G & P Real Estate, Inc.*, 269 Ark. 481, 602 S.W.2d 669 (1980).

Amendment of Section.

The ballot title and the popular name for a proposed amendment which would allow the abrogation of the ten percent limit on interest rates were sufficient to identify the true purpose of the amend-

ment, where the ballot title put a voter on notice of the proposed change by stating "the maximum rate of interest shall not exceed 10 percent except by law enacted by two-thirds vote of the general assembly." *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980).

—Effective Date.

A contract formed in July, 1981, was controlled by Ark. Const., Art. 19, § 13 providing for a maximum interest rate of 10%; however, the creditor, because it was not obligated to renew the debt, could consider any renewal or extension a new contract. Thus, in December, 1982, when Ark. Const. Amend. 60 became effective, it could begin charging interest at the rate of 17% per annum. *Central Flying Serv., Inc. v. Cain*, 285 Ark. 310, 686 S.W.2d 432 (1985).

Arbitration Agreements.

In class action suit against lender for violating usury laws where lender argued that the arbitration clause in its deferred presentment agreement was not a separate agreement, but rather simply part of the whole agreement, and that mutuality had to be analyzed as to the whole agreement, the appellate court held that mutuality within the arbitration agreement itself was required and, because there was no mutuality, the arbitration provision was not valid and was not subject to enforcement under any arbitration act. *The Money Place, LLC v. Barnes*, 349 Ark. 411, 78 S.W.3d 714 (2002).

Attorneys' Fees.

Under Arkansas law, a provision for attorneys' fees, although void, does not per se render an otherwise valid contract usurious. *Pacific Indus., Inc. v. Mountain Inn, Inc.*, 232 F. Supp. 801 (W.D. Ark. 1964).

Assignees.

Purchasers were not allowed to recover twice the amount of interest paid by their assignors since § 4-57-107, which gives an assignee of a contract standing to obtain relief for a usurious contract, has been repealed by implication. *Perryman v. Hackler*, 323 Ark. 500, 916 S.W.2d 105 (1996).

Burden of Proof.

The usury law is a penal statute and when a questioned instrument is not usurious on its face the plainest principles of

justice require that the defense of usury be clearly shown. *Arkansas Real Estate Co. v. Buhler*, 247 Ark. 582, 447 S.W.2d 126 (1969).

The party asserting the defense of usury has the burden of proving by clear and convincing evidence that the transaction is usurious, for usury will not be presumed, imputed or inferred if an opposite result can be fairly and reasonably reached. *Federal Land Bank v. Wilson*, 533 F. Supp. 301 (E.D. Ark. 1982), *aff'd*, 719 F.2d 1367 (8th Cir. 1983); *Easton State Bank v. Winn*, 19 Bankr. 218 (Bankr. E.D. Ark. 1982).

In view of the fact that following adoption of the 1982 amendment this state no longer has a maximum fixed rate of interest and the maximum rate of interest now is a variable one, a contract no longer can be usurious on its face and, as a result, the borrower will always have the burden of proving usury. *Medford v. Wholesale Elec. Supply Co.*, 286 Ark. 327, 691 S.W.2d 857 (1985).

If an instrument is not usurious on its face, the burden of proving usury is on the borrower. *In re Borum*, 60 Bankr. 516 (Bankr. E.D. Ark. 1986).

Evidence sufficient to find that interest charged was not in excess of the constitutional maximum. *Wooten v. Davis*, 293 Ark. 496, 739 S.W.2d 669 (1987).

Check-Casher's Act.

Section 23-52-104(b) was an invalid attempt to evade the usury provisions of this section and, further, such an attempt violated the constitutional mandate requiring separation of powers set forth in Ark. Const., Art. 4. *Luebbers v. Money Store, Inc.*, 344 Ark. 232, 40 S.W.3d 745 (2001).

Class Actions.

A suit alleging usury and seeking to recover penalties in connection with automobile installment sales contracts could not be maintained as a class action, where the common questions did not predominate over the individual ones, and where the case, if certified as a class action, would splinter into many individual suits involving 6,000 separate retail installment contracts. *Ford Motor Credit Co. v. Nesheim*, 287 Ark. 78, 696 S.W.2d 732 (1985).

Collateral Commitments.

The conveyance of land and giving of a mortgage in connection with a loan was

held not to be usury. *Bauer v. Wade*, 170 Ark. 1020, 282 S.W. 359 (1926).

—Bonus Agreements.

A bonus agreement to be paid if a lease was sold at a profit does not enter into an agreement to pay interest on a note so as to make the interest rate usurious, where the transactions are related. *Briant v. Carl-Lee Bros.*, 158 Ark. 62, 249 S.W. 577 (1923).

A ten percent interest-bearing note due in one day and payable with a bonus was usurious. *Singley v. Norman*, 202 Ark. 532, 150 S.W.2d 947 (1941).

Commercial Code.

Uniform Commercial Code does not affect Arkansas law on usury. *Cooper v. Cherokee Village Dev. Co.*, 236 Ark. 37, 364 S.W.2d 158 (1963).

Compounding Interest.

A renewal note which includes both principal and interest of the old note and bearing the maximum legal rate of interest on the entire amount is valid. *Morgan v. Rogers*, 166 Ark. 327, 266 S.W. 273 (1924).

Compounding interest will render a contract usurious if it effectively raises the annual rate of interest above the legal rate. *Strawn Furn. Co. v. Austin*, 280 Ark. 69, 655 S.W.2d 397 (1983).

Computation of Interest.

Computation of interest held not to be usurious. *In re Romine*, 556 F.2d 895 (8th Cir. 1977).

The constitution does not prohibit the practice of computing interest on the basis of a 360-day year. *Martin v. Moore*, 269 Ark. 375, 601 S.W.2d 838 (1980).

It is usury for a creditor to charge a monthly rate of interest on an open account which exceeds the legal rate per annum on a monthly basis even though the interest charged would not exceed the legal rate if figured on an annual basis. *A.Y. McDonald Mfg. Co. v. Shackelford*, 279 Ark. 304, 652 S.W.2d 8 (1983).

Conditional sales contract for purchase of furniture by consumer which provided for annual interest rate of 15% at a time when federal discount rate was 8.5% exceeded the lawful interest rate under this section. *Bishop v. Linkway Stores, Inc.*, 280 Ark. 106, 655 S.W.2d 426 (1983).

Where the usurious transaction began

with an original loan to be repaid at a higher dollar value, the amount of interest paid should have been calculated on the basis of that initial transaction, rather than a second contract for deed. *McElroy v. Grisham*, 306 Ark. 4, 810 S.W.2d 933 (1991).

—Rule of 78ths.

The method of accrual used by the bank, the Rule of 78ths, did not render a promissory note usurious where if the note had been paid according to its terms, interest would have amounted to the legal rate. *Winkle v. Grand Nat'l Bank*, 267 Ark. 123, 601 S.W.2d 559, cert. denied, 449 U.S. 880, 101 S. Ct. 230, 66 L. Ed. 2d 104 (1980).

Conditional Sales Contracts.

A conditional sales contract falls within the provisions of this section. *Pacific Indus., Inc. v. Mountain Inn, Inc.*, 232 F. Supp. 801 (W.D. Ark. 1964).

Conflict of Laws.

—Florida.

Where lender, a Florida resident, believed that transaction whereby he lent money secured by note and mortgage met requirements of Arkansas law due to borrower's misrepresentation, instruments were reformed to reflect proper debt and interest in spite of borrower's claim that reformation would result in usurious contract. *Turney v. Roberts*, 255 Ark. 503, 501 S.W.2d 601 (1973).

—Georgia.

Where a loan agreement was accepted and executed by the lender at its headquarters in Georgia, where the loan payments were to be made to the lender's headquarters in Georgia, and where the loan agreement contained a provision in which the parties agreed that the law of Georgia governed all rights and obligations under the contract, the loan agreement was governed by the law of Georgia; accordingly, even though the interest rate was in excess of the legal rate and would have been usurious under Arkansas law, the agreement was valid and enforceable under the law of Georgia, since it was not usurious under that law. *Bice Constr. Co. v. CIT Corp.*, 700 F.2d 465 (8th Cir. 1983).

—Kansas.

Where the face of a promissory note purported to show that it was executed

and accepted by the claimant lender in Kansas, that payments were to be made to the claimant in Kansas, and that both parties had expressly agreed that the commercial law of Kansas was to govern the contract, the law of Kansas was applicable and the note which exacted an interest rate of 16½ percent per annum was not usurious. *Easton State Bank v. Winn*, 19 Bankr. 218 (Bankr. E.D. Ark. 1982).

—Louisiana.

The usury law of Louisiana controls the validity of a promissory note which was executed in Arkansas but was delivered in and payable in Louisiana; and the fact that there will be a partial forfeiture of the interest in excess of 8 percent, rather than the constitutionally authorized 10 percent, is not so drastic as would compel the court to construe the Arkansas law as controlling to prevent any forfeiture at all. *Pellerin Laundry Mach. Sales Co. v. Hogue*, 219 F. Supp. 629 (W.D. Ark. 1963).

—National Banks.

The policy of competitive state-federal equality in the context of usury regulation is supported by the construction of 12 U.S.C. § 85 which imposes the same interest ceiling on national banks as on the most favored lenders in the state, and thereby puts national banks on equal footing with the most favored lenders in the state without giving them an unconscionable and destructive advantage over all state lenders. *First Nat'l Bank v. Nowlin*, 509 F.2d 872 (8th Cir. 1975).

—New York.

A note and mortgage negotiated, executed, and payable in New York, although on real estate in Arkansas, calling for interest at a rate legal in New York, but illegal in Arkansas, was governed by the law of New York on the question of usury. *National Sur. Corp. v. Inland Properties, Inc.*, 286 F. Supp. 173 (E.D. Ark. 1968), *aff'd*, 416 F.2d 457 (8th Cir. 1969).

—Tennessee.

The lender of money on a note, drawn in Arkansas where the interest rate was valid and payable in Tennessee where the rate was usurious, may show his intent to be governed by the law of the domicile of the makers of the note, and that there was no intent to evade the laws of Tennessee. *Wilson-Ward Co. v. Walker*, 125 Ark. 404, 188 S.W. 1184 (1916).

Notes executed and made payable in Tennessee but secured by property in Arkansas are governed by the Arkansas law as to interest charged. *Ellis v. Crowe*, 193 Ark. 255, 99 S.W.2d 568 (1936).

Where the original lease for a backhoe was signed in Tennessee and payments were to be made there, but the debtor lived and worked in Arkansas and the equipment was to be used there, and the parties expressly contracted for Tennessee law, the Arkansas usury law applied to the security agreement made upon the subsequent sale of the backhoe, in view of Arkansas' strong public policy against usury. *Hawkins Equip. Co. v. Goldstein*, 460 F. Supp. 1224 (E.D. Ark. 1978), *aff'd*, 603 F.2d 222 (8th Cir. 1979).

—Texas.

Where seller was a Texas corporation and contract was entitled "Texas Automobile Retail Installment Contract" and official of seller came to Arkansas at request of purchaser and contract was executed by the purchaser in Arkansas but not by the seller and later executed by the seller in Texas the usury laws of Texas governed. *Bridgeman v. Gateway Ford Truck Sales*, 296 F. Supp. 233 (E.D. Ark. 1969), modified on reh'g, 311 F. Supp. 695 (E.D. Ark. 1970).

Debtor's Consent.

The debtor need not agree to a usurious rate of interest; it is enough that the rate is charged. *A.Y. McDonald Mfg. Co. v. Shackelford*, 279 Ark. 304, 652 S.W.2d 8 (1983).

Defenses.

—Bona Fide Holder.

Plea of bona fide holder for value is no defense to usury. *Hare v. General Contract Purchase Corp.*, 220 Ark. 601, 249 S.W.2d 973 (1952); *Hare v. General Contract Purchase Corp.*, 222 Ark. 291, 262 S.W.2d 287 (1953).

The caveat issued in *Hare v. General Contract Purchase Corp.*, 220 Ark. 601, 249 S.W.2d 973, that substance and not form would hereafter be considered in usury cases, does not apply to conditional sales contracts entered into before the opinion in the *Hare* case became final. *Crisco v. Murdock Acceptance Corp.*, 222 Ark. 127, 258 S.W.2d 551, cert. denied, 346 U.S. 910, 74 S. Ct. 239, 98 L. Ed. 407 (1953).

The caveat issued in *Hare v. General Contract Purchase Corp.*, 220 Ark. 601, 249 S.W.2d 973 that in future contracts financing sale of merchandise on credit could be attacked for usury where return was more than ten percent was not limited to transactions where a loan of money was involved but applies also between the seller and buyer where a credit sale is involved. *Sloan v. Sears, Roebuck & Co.*, 228 Ark. 464, 308 S.W.2d 802 (1957).

Discounting.

A contract whereby a borrower received \$160 for which he promised to pay \$200 in five years with interest thereon at six percent from the date of the loan is usurious. *Ellis v. Terrell*, 109 Ark. 69, 158 S.W. 957 (1913); *Fausett & Co. v. G & P Real Estate, Inc.*, 269 Ark. 481, 602 S.W.2d 669 (1980).

Contract under which lender, on the basis of 36-month financing, received a \$12,631 note in exchange for \$9,500 cash was clearly usurious. *Pellerin Laundry Mach. Sales Co. v. Reed*, 300 F.2d 305 (8th Cir. 1962).

Federal Law.

Congress did not exceed the legislative authority given it by the Commerce Clause when it enacted § 731 of the Gramm-Leach-Bliley Financial Modernization Act of 1999, Pub. L. No. 106-102, codified at 12 U.S.C. § 1831u, which allows in-state banks, i.e., banks chartered in Arkansas, to charge the same rate as any out-of-state bank that has a branch in the state, the effect of which was to override the maximum lawful rate of interest set by this section. *Johnson v. Bank of Bentonville*, 122 F. Supp. 2d 994 (W.D. Ark. 2000).

Future Payments.

The chancellor should have ordered each future monthly payment reduced by the part of the payment representing usurious interest. *Lotz v. Cromer*, 317 Ark. 250, 878 S.W.2d 367 (1994).

Implied Contract.

An obligation created by obligors jointly liable on a promissory note, one of whom subsequently paid the entire obligation, entitled the payor to contribution by the others on an implied obligation; however, the chancellor erred in ordering the joint obligors to pay the payor prejudgment and

postjudgment interest of 15 and three-fourths percent on their share of the liability, in that the liability being upon an implied contract, this constitutional provision limited the prejudgment interest to six percent and the interest after judgment to ten percent. *Halford v. Southern Capital Corp.*, 279 Ark. 261, 650 S.W.2d 580 (1983).

Prejudgment interest was limited to six percent per annum on a letter of credit which was held to be a contract in which no rate of interest was agreed upon where the promissory note which the letter of credit secured provided for interest at the rate of 13 percent, but the letter of credit itself made no provision for the payment of interest. *City Nat'l Bank v. First Nat'l Bank & Trust Co.*, 22 Ark. App. 5, 732 S.W.2d 489 (1987).

Implied Repeal.

Constitutional Amend. 60 to this section, by implication, repealed §§ 4-57-106 and 4-57-107. *Henslee v. Madison Guar. Sav. & Loan Ass'n*, 297 Ark. 183, 760 S.W.2d 842 (1989).

Installment Contracts.

An installment sales contract falls within constitutional and statutory provisions of Arkansas relating to usury. *Schuck v. Murdock Acceptance Corp.*, 220 Ark. 56, 247 S.W.2d 1 (1952); *Holland v. Doan*, 228 Ark. 340, 307 S.W.2d 538 (1957); *Universal C.I.T. Credit Corp. v. Hudgens*, 234 Ark. 668, 356 S.W.2d 658 (1962); *Pacific Indus., Inc. v. Mountain Inn, Inc.*, 232 F. Supp. 801 (W.D. Ark. 1964); *Ford Motor Credit Co. v. Hutcherson*, 277 Ark. 102, 640 S.W.2d 96 (1982).

Purchasers' explanation that their non-payment of monthly installments was an effort to mitigate damages by reducing the amount of interest they could recover as usuriously paid was without merit since the usury law only voids the contract as to "unpaid interest"; consequently, pursuant to its own terms, the contract for sale terminated upon failure to make monthly installment payments and reverted to a month-to-month lease. *Perryman v. Hackler*, 323 Ark. 500, 916 S.W.2d 105 (1996).

A retail installment contract was usurious under Arkansas law where it expressly stated that an interest rate of 18 percent per annum was to be charged.

Evans v. Harry Robinson Pontiac-Buick, Inc., 336 Ark. 155, 983 S.W.2d 946 (1999).

—Advance Payments.

A contract, otherwise legal, was not rendered usurious by the makers paying ten monthly payments in advance. Green v. Mid-State Homes, Inc., 245 Ark. 866, 435 S.W.2d 436 (1968).

—Lease Agreements.

Where purported leasing arrangement placed all the risk upon the lessee, provided that the lessor, a finance company, would have the same remedies upon default available to a conditional seller or mortgagee, provided that lessee would join lessor in executing financing statements, offered lessee the option at the end of the five year term of buying the equipment for 10 percent of its original contract price after he had paid more than \$17,500 for equipment with an initial value of \$12,650, such arrangement was in fact an installment sale contract with 19.31 percent interest rate and usurious. Bell v. Itek Leasing Corp., 262 Ark. 22, 555 S.W.2d 1 (1977).

Installment Loans.

Provisions of former installment loan law were unconstitutional insofar as they sought to allow interest to be charged in excess of the constitutional provision. Strickler v. State Auto Fin. Co., 220 Ark. 565, 249 S.W.2d 307 (1952); Winston v. Personal Fin. Co., 220 Ark. 580, 249 S.W.2d 315 (1952).

Installment loans made by a bank having a true interest rate, because of add-on and discounting, greater than the legal rate, were usurious. Public Loan Corp. v. Stanberry, 224 Ark. 258, 272 S.W.2d 694 (1954); First Nat'l Bank v. Nowlin, 374 F. Supp. 1037 (E.D. Ark. 1974), *aff'd*, 509 F.2d 872 (8th Cir. 1975); Ryder Truck Rental, Inc. v. Kramer, 263 Ark. 169, 563 S.W.2d 451 (1978).

Intent.

To constitute usury there must be either an agreement by which the borrower promises to pay and the lender knowingly receives a higher than legal rate of interest, or the greater rate must be knowingly and intentionally reserved, taken, or secured. Briant v. Carl-Lee Bros., 158 Ark. 62, 249 S.W. 577 (1923).

It is not necessary that both parties to a

loan contract intend that an unlawful rate of interest be charged, but the contract is usurious if the lender alone charges or receives more than is lawful. Wilson v. Whitworth, 197 Ark. 675, 125 S.W.2d 112 (1939); Brittian v. McKim, 204 Ark. 647, 164 S.W.2d 435 (1942); Schuck v. Murdock Acceptance Corp., 220 Ark. 56, 247 S.W.2d 1 (1952).

There must be an intent to charge, reserve or receive unlawful interest to constitute usury, and a lender who makes an excessive charge through a mistake or ignorance of the fact it was excessive has no intent to unlawfully charge interest. Seward v. Mid-State Homes, Inc., 238 Ark. 267, 379 S.W.2d 271 (1964); First Am. Nat'l Bank v. McClure Constr. Co., 265 Ark. 792, 581 S.W.2d 550 (1979), *aff'd*, 270 Ark. 702, 606 S.W.2d 70 (1980); Federal Land Bank v. Wilson, 533 F. Supp. 301 (E.D. Ark. 1982), *aff'd*, 719 F.2d 1367 (8th Cir. 1983).

A contract was usurious where the finance company computed interest at the Mississippi maximum legal rate instead of the Arkansas maximum legal rate through mistake. Ford Motor Credit Co. v. Catalani, 238 Ark. 561, 383 S.W.2d 99 (1964).

The intent required to constitute usury is the intent to charge a certain amount and if the amount exceeds the legal rate, there was an intent to charge a usurious rate of interest. Ford Motor Credit Co. v. Hutcherson, 277 Ark. 102, 640 S.W.2d 96 (1982).

The intent to charge a usurious rate will never be presumed, imputed or inferred where the opposite result can fairly and reasonably be reached. In re Borum, 60 Bankr. 516 (Bankr. E.D. Ark. 1986).

Judgments.

In a suit by asphalt subcontractors to recover from the general contractor for its alleged breach of two contracts, the subcontractors were entitled to 6 percent interest from the date of the filing of their complaints, even though they did not recover the sums sought, and to 10 percent interest following judgment. Advance Constr. Co. v. Dunn, 263 Ark. 232, 563 S.W.2d 888 (1978).

The trial court correctly amended the prejudgment interest to six percent where the facts showed that the obligation was contractual and there was no agreed rate

of interest. *Wilson v. Lester Hurst Nursery, Inc.*, 269 Ark. 19, 598 S.W.2d 407 (1980).

Where plaintiff was awarded damages for damage done to his vehicle, it was damage whose value was immediately ascertainable with reasonable certainty and therefore prejudgment interest was includible from the date of injury to the date judgment was entered. *Wooten v. McClendon*, 272 Ark. 61, 612 S.W.2d 105 (1981).

Prejudgment interest is limited by this section to six percent per annum. *Rest Hills Mem. Park v. Clayton Chapel Sewer Imp. Dist. No. 233*, 6 Ark. App. 180, 639 S.W.2d 519 (1982).

This article voids only the payment of interest under a usurious contract and has nothing to do with the interest due on the judgment amount, therefore, should a trial court award net judgment in favor of the defendants, it may also award post judgment interest on that amount. *McElroy v. Grisham*, 306 Ark. 4, 810 S.W.2d 933 (1991).

The chancellor's ruling fashioning a mostly oral real estate agreement, as a sale, and not a lease-purchase agreement, was very reasonable, and as the correct interest rate could not necessarily be calculated, the imposition of a six percent interest rate under subdivision (d)(i) was justified. *Chambers v. Manning*, 315 Ark. 369, 868 S.W.2d 64 (1993).

A decree limiting the double recovery to interest paid prior to the filing of the suit was inconsistent with this section. *Lotz v. Cromer*, 317 Ark. 250, 878 S.W.2d 367 (1994).

This section has nothing to do with interest on a judgment amount. *Gavin v. Gavin*, 319 Ark. 270, 890 S.W.2d 592 (1995).

This section does not apply to interest on judgments. *Carroll Elec. Coop. Corp. v. Carlton*, 319 Ark. 555, 892 S.W.2d 496 (1995).

Jurisdiction of the Court.

A foreign corporation which was the admitted payee of a \$300 note in an usurious transaction was properly in court upon service of process upon the agent who transacted the business. *Public Loan Corp. v. Stanberry*, 224 Ark. 258, 272 S.W.2d 694 (1954).

Penalty.

All contracts for a greater rate of inter-

est than the legal rate are void, as to principal and interest. *Tindall v. Sims*, 212 Ark. 860, 208 S.W.2d 173 (1948).

In the case of a transaction found to be usurious under this section, the penalty is part of the substantive law applicable to the case which is determined at the inception of the transaction. *Brookshire v. Coffman*, 287 Ark. 112, 696 S.W.2d 748 (1985).

Amendment 60, codified at this section, does not limit the recovery to excess interest but provides that a person who has paid interest in excess of the maximum lawful rate may recover the amount of interest paid. *Dillon v. Resolution Trust Corp.*, 306 Ark. 173, 811 S.W.2d 765 (1991).

Although a renewal note was usurious because the terms of the loan agreement itself were usurious, because a usurious rate of interest was not being collected from the borrower, this section did not provide for a penalty. *Coopridier v. Security Bank*, 319 Ark. 75, 890 S.W.2d 240 (1994).

The plain meaning of the language of this section requires payment of excess interest in order to recover twice the amount paid; where the bank applied borrower's payment to only the legal rate of interest and the remainder to the principal, no interest was paid in excess of the maximum rate. *Coopridier v. Security Bank*, 319 Ark. 75, 890 S.W.2d 240 (1994).

Although this section provides the General Assembly with authority to enact legislation providing punishment for one who knowingly charges a usurious rate of interest, the General Assembly has not done so. *Perryman v. Hackler*, 323 Ark. 500, 916 S.W.2d 105 (1996).

Pleading.

In suit to cancel contract because of usury, allegations in affidavits stating that creditor did not inform purchaser that credit insurance could be obtained at a lower premium and that creditor received a commission on the premium charged for the credit insurance constituted inferences from which a violation of the usury laws might be drawn. *Robinson v. Rebsamen Ford, Inc.*, 258 Ark. 935, 530 S.W.2d 660 (1975).

A litigant pleading usury as an affirmative defense has the duty to allege the essential facts and circumstances which

render the transaction usurious. *Federal Land Bank v. Wilson*, 533 F. Supp. 301 (E.D. Ark. 1982), *aff'd*, 719 F.2d 1367 (8th Cir. 1983).

Post-Judgment Interest.

Where judgment was rendered in favor of a car dealer in its action against a bank arising from the breach of a contract for recourse financing under § 16-65-114(a), the trial court erred by awarding post-judgment interest at a rate of six and one-quarter percent because there was no evidence in the record of the Federal Reserve Discount Rate which, under this section, was the baseline for determining whether the interest rate, was unconstitutionally excessive; hence, the judgment was reversed as to the interest rate and the case was remanded for determination of the proper interest rate based on the Federal Reserve Discount Rate at the time the contract at issue was executed. *Bank of Am., N.A. v. C.D. Smith Motor Co.*, 353 Ark. 228, 106 S.W.3d 425 (2003).

Preemption by Federal Act.

In view of fact that Congress had constitutional authority under the commerce clause to set the maximum interest rate that could be charged by Federal Land Banks and FDIC-insured state banks, federal legislation, which amended such, preempts state usury laws. *Stephens Sec. Bank v. Eppivic Corp.*, 411 F. Supp. 61 (W.D. Ark. 1976); *Briggs v. Capital Sav. & Loan Ass'n*, 268 Ark. 527, 597 S.W.2d 600 (1980); *McInnis v. Cooper Communities, Inc.*, 271 Ark. 503, 611 S.W.2d 767 (1981); *Federal Land Bank v. Wilson*, 719 F.2d 1367 (8th Cir. 1983); *Rhode v. Kremer*, 280 Ark. 136, 655 S.W.2d 410 (1983); *Troutt v. First Fed. Sav. & Loan Ass'n*, 280 Ark. 505, 659 S.W.2d 183 (1983).

The Depository Institutions Deregulation and Monetary Control Act of 1980 has preempted this state's usury limitations set forth in this section for a loan made in this state by a federally insured institution after March 31, 1980 and secured by a first lien on residential real property. *FirstSouth v. Lawson Square, Inc.*, 61 Bankr. 145 (Bankr. W.D. Ark. 1986); *FirstSouth v. Lawson Square, Inc.*, 816 F.2d 1236 (8th Cir. 1987).

The result of federal preemption of state usury laws as to residential real property loans, and Arkansas's choice not to reas-

sert a limit, is that there is no limit on the legal rate of interest which may be charged on such a loan in Arkansas, so long as the loan is secured by a first lien and the other requirements of the federal act are met. *FirstSouth v. Lawson Square, Inc.*, 816 F.2d 1236 (8th Cir. 1987).

Congress has attempted to completely preempt state usury laws which limit the amount of interest that can be charged on a federally-related loan secured on a residential manufactured home. The inclusion of a refrigerator and range in the financing agreement does not take the matter out of the preemption doctrine. *Draper v. Castle Home Sales, Inc.*, 711 F. Supp. 1499 (E.D. Ark. 1989), *aff'd*, 894 F.2d 1341 (8th Cir. 1989); *Draper v. Castle Home Sales, Inc.*, 711 F. Supp. 1501 (E.D. Ark. 1989).

The Depository Institutions Deregulation and Monetary Control Act of 1980 preempted the constitutional usury limitation for a \$10,000,000 loan to finance the construction of a hotel to be repaid from the earnings of that hotel, which was privately owned and operated for profit, even though the city issued bonds as part of the financing scheme. *Bank of N.Y. v. University Partners, Ltd.*, 719 F. Supp. 1479 (W.D. Ark. 1989).

This section does not override Veterans Administration (VA) and Farmers Home Administration (FHA) preemption statutes exempting VA and FHA loans from state laws limiting interest rates. *Burris v. First Fin. Corp.*, 733 F. Supp. 1270 (E.D. Ark. 1990), *aff'd*, 928 F.2d 797 (8th Cir.), *cert. denied*, 502 U.S. 867, 112 S. Ct. 195, 116 L. Ed. 2d 155 (1991).

This section is preempted by the federal law applicable to interest charged by nationally chartered banks, 12 U.S.C. § 85. *M. Nahas Co. v. First Nat'l Bank*, 739 F. Supp. 1338 (W.D. Ark. 1990), *aff'd*, 930 F.2d 608 (8th Cir. 1991).

Arkansas' adoption of Amendment 60 in 1982, codified at Ark. Const., Art. 19, § 13, did not override Federal Housing Authority/Veteran's Administration (FHA/VA) preemption provisions. *Burris v. First Fin. Corp.*, 928 F.2d 797 (8th Cir. 1991), *cert. denied*, 502 U.S. 867, 112 S. Ct. 195, 116 L. Ed. 2d 155 (1991).

12 U.S.C. § 86 is still the exclusive federal usury remedy against national banks, and remains undisturbed by the amendment to this section. *M. Nahas &*

Co. v. First Nat'l Bank, 930 F.2d 608 (8th Cir. 1991).

The Monetary Control Act of 1980, 12 U.S.C. § 1735f-7a, preempted state usury law with regard to a loan secured by a first lien on residential real property, notwithstanding that the loan was also secured by a mobile home. *Nelson v. River Valley Bank & Trust*, 334 Ark. 172, 971 S.W.2d 777 (1998).

Prepayment of Loan.

A voluntary prepayment in the exercise of an option given by the contract does not render the contract usurious even though the creditor receives, in the aggregate, a sum more than the principal and the maximum legal rate of interest, since a debtor cannot by making a payment in advance of its due date convert a valid loan into a usurious one. *Winkle v. Grand Nat'l Bank*, 267 Ark. 123, 601 S.W.2d 559, cert. denied, 449 U.S. 880, 101 S. Ct. 230, 66 L. Ed. 2d 104 (1980).

Presumptions.

The intention to charge a usurious rate of interest will never be presumed, imputed or inferred where the opposite result can be fairly and reasonably reached. *Smith v. MRCC Partnership*, 302 Ark. 547, 792 S.W.2d 301 (1990).

Rate Determination.

Subdivision (d)(i) allows for an interest rate when no rate has been decided upon; it does not provide for interest when no interest has been provided by the parties. *Brady v. Bryant*, 319 Ark. 712, 894 S.W.2d 144 (1995).

Post-judgment interest rate of 6.25 percent on non-contract damages imposed by a trial court was proper as the 10 percent post-judgment interest that the prevailing party sought was not awardable if it exceeded the amount allowed by the Arkansas Constitution. *Superior Fed. Bank v. Mackey*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 848 (Nov. 19, 2003).

Rate Increase.

An increase in the interest rate on a note is valid where the increased rate is not in excess of the maximum legal rate. *Red Bud Realty Co. v. South*, 153 Ark. 380, 241 S.W. 21 (1922).

A contract formed in July, 1981, was controlled by Ark. Const., Art. 19, § 13, however, the creditor because it was not

obligated to renew the debt, could consider any renewal or extension a new contract thus, in December, 1982, when Ark. Const. Amend. 60 became effective, it could begin charging interest at the new maximum legal rate. *Central Flying Serv., Inc. v. Cain*, 285 Ark. 310, 686 S.W.2d 432 (1985).

Revenue Bonds.

Where a county judge and county clerk authorized a contract for the sale of revenue bonds for the purpose of upgrading and expanding a county owned and operated hospital, the loan as evidenced by the bonds was not within the plain meaning of the term business loan as used in a federal act which permitted a person making such business loans to charge more interest than otherwise would be allowed under state constitutions and, therefore, this section's maximum interest rates applied to the bonds. *Worthen v. Dillard*, 275 Ark. 132, 628 S.W.2d 7 (1982).

Sales Tax.

For usury purposes, collection by the conditional seller of an amount designated and labeled sales tax, for which seller was liable to the state of Arkansas, normally should not be computed as part of the interest or an exaction for forbearance. *Pacific Indus., Inc. v. Mountain Inn, Inc.*, 232 F. Supp. 801 (W.D. Ark. 1964).

Separation of Powers.

This amendment which permits maximum interest rates at 5% above the federal discount rate did not violate the constitutional requirements of separation of powers. *W.E. Tucker Oil Co. v. Portland Bank*, 285 Ark. 453, 688 S.W.2d 293 (1985).

Unlawful Detainer.

Trial court did not err in awarding seller judgment for unpaid rent based on twice the amount of fair rental value under unlawful detainer law notwithstanding purchasers' argument that under the contract, they did not owe seller anything at the time suit was filed. *Perryman v. Hackler*, 323 Ark. 500, 916 S.W.2d 105 (1996).

Void Contracts.

Where the Constitution declares a contract void, it gathers no validity by circulation. (The holding in this case is dic-

tum.) *Park v. Bank of Lockesburg*, 178 Ark. 669, 11 S.W.2d 483 (1928).

Plaintiff suing on note which was void because usurious was not entitled to be subrogated to previous valid debt and lien although the proceeds of the usurious loan were used to discharge such previous debt. *Jones v. Tindall*, 216 Ark. 431, 226 S.W.2d 44 (1950).

The usury policy is not so strong as to nullify an already executed contract and thus payments once made cannot be recovered. *Hawkins Equip. Co. v. Goldstein*, 460 F. Supp. 1224 (E.D. Ark. 1978), *aff'd*, 603 F.2d 222 (8th Cir. 1979).

Once it is determined that a charge of excess interest is made by the terms of the note, it is usurious and subsequent unilateral action whereby the excess interest is called principal will not give new life to the usurious contract. *Dillon v. Resolution Trust Corp.*, 306 Ark. 173, 811 S.W.2d 765 (1991).

—Retroactive Effect.

Supreme Court decision declaring Small Loans Act to be unconstitutional to the extent that it authorized illegal interest under guise of service charges, would be given retroactive effect to allow borrowers who had borrowed after act went into effect but prior to date of Supreme Court decision to cancel notes and chattel mortgages on ground of usury, notwithstanding contention that prior transactions were protected by due process and contract clauses of state and federal Constitutions, and appellant acted at his peril when he acted upon assumption that act would be upheld. *Public Loan Corp. v. Peterson*, 224 Ark. 22, 271 S.W.2d 353 (1954).

—Title to Property.

If a contract is declared void for usury, title does not remain in the seller. *Sloan v. Sears, Roebuck & Co.*, 228 Ark. 464, 308 S.W.2d 802 (1957); *Universal C.I.T. Credit Corp. v. Hudgens*, 234 Ark. 668, 356 S.W.2d 658 (1962).

"Lease" was patently usurious and the leasing transaction was void. *Hill v. Bentco Leasing, Inc.*, 288 Ark. 623, 708 S.W.2d 608 (1986).

Cited: *Bradley v. Hall*, 220 Ark. 925, 251 S.W.2d 470 (1952); *United States ex rel. Peevy v. Pensacola Constr. Co.*, 257 F. Supp. 131 (W.D. Ark. 1966); *International Harvester Co. v. Burks Motors, Inc.*, 252 Ark. 816, 481 S.W.2d 351 (1972); *McAdoo v. Union Nat'l Bank*, 535 F.2d 392 (8th Cir. 1976); *Parks v. E.N. Beard Hardwood Lumber, Inc.*, 263 Ark. 501, 565 S.W.2d 615 (1978); *Employment Sec. Div. v. W.F. Hurley, Inc.*, 612 F.2d 392 (8th Cir. 1980); *Barnett v. Borg-Warner Acceptance Corp.*, 488 F. Supp. 786 (E.D. Ark. 1980); *Wakefield v. Goldstein*, 644 F.2d 707 (8th Cir. 1981); *James v. J.F.K. Carwash, Inc.*, 275 Ark. 141, 628 S.W.2d 299 (1982); *Toney v. Haskins*, 7 Ark. App. 98, 644 S.W.2d 622 (1983); *Tiffany Indus., Inc. v. Commercial Grain Bin Co.*, 714 F.2d 799 (8th Cir. 1983); *Hutcherson v. Wood*, 279 Ark. 190, 650 S.W.2d 229 (1983); *Troutt v. First Fed. Sav. & Loan Ass'n*, 280 Ark. 505, 659 S.W.2d 183 (1983); *Ford Motor Credit Co. v. Rogers*, 285 Ark. 64, 685 S.W.2d 145 (1985); *Medford v. Wholesale Elec. Supply Co.*, 286 Ark. 327, 691 S.W.2d 857 (1985); *In re Borum*, 60 Bankr. 516 (Bankr. E.D. Ark. 1986); *Aetna Life Ins. Co. v. Great Nat'l Corp.*, 818 F.2d 19 (8th Cir. 1987); *Gleghorn v. Ford Motor Credit Co.*, 293 Ark. 289, 737 S.W.2d 451 (1987); *Wooten v. Davis*, 293 Ark. 496, 739 S.W.2d 669 (1987); *USAA Life Ins. Co. v. Boyce*, 294 Ark. 575, 745 S.W.2d 136 (1988); *Taylor's Marine, Inc. v. Waco Mfg., Inc.*, 302 Ark. 521, 792 S.W.2d 286 (1990); *Killam v. Texas Oil & Gas Corp.*, 303 Ark. 547, 798 S.W.2d 419 (1990); *Winn v. Chateau Cantrell Apt. Co.*, 304 Ark. 146, 801 S.W.2d 261 (1990); *Wilson v. City of Fayetteville*, 310 Ark. 154, 835 S.W.2d 837 (1992); *Shepherd v. State Auto Property & Cas. Ins. Co.*, 312 Ark. 502, 850 S.W.2d 324 (1993); *Wiseman v. State Bank & Trust*, 313 Ark. 289, 854 S.W.2d 725 (1993); *Hempel v. Bragg*, 313 Ark. 486, 856 S.W.2d 293 (1993); *Direct Gen. Ins. Co. v. Lane*, 328 Ark. 476, 944 S.W.2d 528 (1997); *Magee v. Exxon Corp.*, 135 F.3d 599 (8th Cir. 1998); *Bedford v. Fox*, 333 Ark. 509, 970 S.W.2d 251 (1998); *Tay-Tay, Inc. v. Young*, 349 Ark. 675, 80 S.W.3d 365 (2002).

§ 14. Lotteries prohibited.

No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

CASE NOTES

ANALYSIS

Applicability.

Appeal.

Chancery courts jurisdiction.

Conveyance in trust for lottery winner.

Enforcement.

"Lottery" construed.

Pari-mutuel betting.

Proposed amendments.

Sale of lottery tickets.

Applicability.

This section does not operate as a blanket prohibition against every statute legalizing some form of gambling, but forbids only the legalization of lotteries and sale of lottery tickets. *Scott v. Dunaway*, 228 Ark. 943, 311 S.W.2d 305 (1958).

Appeal.

If under lottery prosecutions defendants' cases are dismissed, where there is actually sufficient evidence to sustain their conviction, the cases may be remanded since punishment is limited to a fine. *State v. Bass*, 224 Ark. 976, 277 S.W.2d 479 (1955).

Chancery Courts Jurisdiction.

There is a narrow exception to the rule that chancery courts will refrain from interfering with prosecutorial functions, but that exception is limited to the chancery court's protection of property rights in the form of lawful businesses; it does not apply to forms of illegal gambling. *Dickey v. Signal Peak Enters.*, 340 Ark. 276, 9 S.W.3d 517 (2000).

Conveyance in Trust for Lottery Winner.

Where owner of real property conveyed property to trustee to hold for winner of lottery and the trustee conveyed the property to the winner of the lottery, the deed of the winner of the lottery was good as against the former owner and against the holder of a mortgage previously given by the former owner but holder of the mortgage was entitled to a decree establishing the priority of his mortgage lien. *Shuffield*

v. Raney, 226 Ark. 3, 287 S.W.2d 588 (1956).

Enforcement.

The general rule prohibiting chancery courts from interfering with prosecutorial functions applied, and the chancery court had no jurisdiction to enjoin the Prosecuting Attorney from prosecuting any operation that constitutes gambling as described in this section of the Arkansas Constitution, and defined in § 5-66-101, et seq. *Dickey v. Signal Peak Enters.*, 340 Ark. 276, 9 S.W.3d 517 (2000).

"Lottery" Construed.

Contracts under which purchasers paid uniform prices for lots of varying value and the lots were apportioned to the purchasers by chance are unenforceable as being lotteries. *Burks v. Harris*, 91 Ark. 205, 120 S.W. 979, 23 L.R.A. (n.s.) 626, 134 Am. St. R. 67, 18 Ann. Cas. 566 (1909).

Buying a chance for valuable consideration paid or to be paid to obtain a possible prize is a lottery, even though limited to members of an alleged charitable organization, and although some of the money goes to charity. *State v. Bass*, 224 Ark. 976, 277 S.W.2d 479 (1955).

A lottery is a species of gaming which may be defined as a scheme for the distribution of prizes by chance among persons who have paid or agreed to pay a valuable consideration for the chance to obtain a prize. *Shuffield v. Raney*, 226 Ark. 3, 287 S.W.2d 588 (1956).

Pari-Mutuel Betting.

Statute legalizing pari-mutuel betting on horse races, is not unconstitutional on the ground of being a lottery, as element of chance, though present, is not controlling, but the condition, speed, and endurance of the horse, aided by the skill and management of the rider or driver, is the determining factor of the result of the race. *Longstreth v. Cook*, 215 Ark. 72, 220 S.W.2d 433 (1949).

The statute permitting pari-mutuel betting on greyhound races does not violate

this section of the constitution, since such betting involves an opportunity to exercise judgment and is not completely controlled by chance, and cannot be classified as a lottery. *Scott v. Dunaway*, 228 Ark. 943, 311 S.W.2d 305 (1958).

Proposed Amendments.

Ballot title for proposed Amendment, authorizing a state-owned lottery, upheld where the title accurately summarized the text of the proposed Amendment and was plain and organized in a coherent manner, no material omissions were made, and the title was not misleading; the length of 482 words was not too long and the presentation of multiple considerations was not too complex or confusing. *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996).

The ballot title for proposed Amend-

ment, regarding a state lottery and other gambling, contained material omissions that rendered the ballot title fatally defective. *Parker v. Priest*, 326 Ark. 386, 931 S.W.2d 108 (1996).

The popular name and ballot title of proposed Amendment, regarding lottery, bingo, raffle, and video terminal games, held insufficient. *Crochet v. Priest*, 326 Ark. 338, 931 S.W.2d 128 (1996).

Sale of Lottery Tickets.

A lottery ticket is an illegal consideration and amounts to no consideration at all. *Shuffield v. Raney*, 226 Ark. 3, 287 S.W.2d 588 (1956).

Cited: *Arkansas State Racing Comm. v. Southland Racing Corp.*, 226 Ark. 995, 295 S.W.2d 617 (1956); *Masterson v. State ex rel. Bryant*, 329 Ark. 443, 949 S.W.2d 63 (1997).

§ 15. [Repealed.]

Publisher's Notes. This section was repealed by Ark. Const. Amend. 54, § 2. Section 1 of Amendment 54 dealt with the

purchase of printing, stationery and supplies.

§ 16. Contracts for public buildings or bridges.

All contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor; or for providing for the care and keeping of paupers, where there are no alms-houses, shall be given to the lowest responsible bidder, under such regulations as may be provided by law.

CASE NOTES

ANALYSIS

Changes in plans.
Competitive bids.
Judge acting alone.
Price for materials.

Changes in Plans.

A contract let in accordance with constitutional provisions is valid though it contains a clause providing for the making of necessary changes in the building. *Shackleford v. Campbell*, 110 Ark. 355, 161 S.W. 1019 (1913).

Competitive Bids.

An advertisement by the board of bridge commissioners that they are ready to receive plans, specifications and bids for the erection of a county bridge from which one

will be accepted, authorized by legislative act, is the authorization of a contract letting which admits of no competition. *Fones Hdwe. Co. v. Erb*, 54 Ark. 645, 17 S.W. 7, 13 L.R.A. 353 (1891).

Judge Acting Alone.

A contract entered into by the county judge during vacation, and not ratified by the county court, is void. *Ross Drainage Dist. v. Clark County*, 153 Ark. 175, 239 S.W. 740 (1922).

Price for Materials.

Where a contract for the building of a bridge is let in accordance with constitutional provisions, the contract price is the measure of the contractor's rights and not the customary price for materials fur-

nished or work done. *Watkins v. Stough*,
103 Ark. 468, 147 S.W. 443 (1912).

§ 17. Digest of laws — Publication.

The laws of this State, civil and criminal, shall be revised, digested, arranged, published and promulgated at such times and in such manner as the General Assembly may direct.

§ 18. Safety of miners and travelers.

The General Assembly, by suitable enactments, shall require such appliances and means to be provided and used as may be necessary to secure, as far as possible, the lives, health and safety of persons employed in mining, and of persons traveling upon railroads, and by other public conveyances, and shall provide for enforcing such enactments by adequate pains and penalties.

§ 19. Deaf and dumb and blind and insane persons.

It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb, and of the blind; and also for the treatment of the insane.

CASE NOTES

ANALYSIS

Separate from school system.
Superintendent.

Separate from School System.

A school for the blind is not a component part of the common or public school system; consequently, money from the permanent school fund may not be made available for such a school. *Walls v. State*

Bd. of Educ., 195 Ark. 955, 116 S.W.2d 354 (1938).

Superintendent.

The legislature has the duty to provide by law for the support of the deaf and dumb and of the blind, and, under this duty, may create a permanent state office of superintendent of the school for the blind. *Lucas v. Futrall*, 84 Ark. 540, 106 S.W. 667 (1907).

§ 20. Oath of office.

Senators and Representatives, and all judicial and executive, State and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices, shall take and subscribe to the following oath of affirmation: "I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of _____, upon which I am now about to enter."

Cross References. Members of legislature, administration of oaths, § 10-2-105.

CASE NOTES

ANALYSIS

Failure to take oath.

—Attacking officer's authority.

Improvement districts.

Failure to Take Oath.

The failure of the assessor to append the proper oath to his return is not a ground for an injunction. *Stell v. Watson*, 51 Ark. 516, 11 S.W. 822 (1889).

A school director must take and subscribe the official oath and file it within ten days with the county clerk. Failing to do so, his predecessor continues in office. *School Dist. v. Bennett*, 52 Ark. 511, 13 S.W. 132 (1889).

—Attacking Officer's Authority.

A taxpayer cannot avoid the payment of taxes by attacking the status of the assessor's act by showing the assessor has not

taken a proper oath. Such an attack is collateral and the assessor's status as a de facto officer cannot be attacked in such manner. *Moore v. Turner*, 43 Ark. 243 (1884); *Murphy v. Sheppard*, 52 Ark. 356, 12 S.W. 707 (1889).

Improvement Districts.

The members of a board of commissioners, appointed under an act creating a road improvement district, are not officers required to take and subscribe an oath before entering upon the duties of their office. *Nall v. Kelley*, 120 Ark. 277, 179 S.W. 486 (1915).

Oath of office taken by commissioners of levee and drainage district was in substantial, if not literal, compliance with this section. *O'Kane v. McClean Bottom Levee & Drainage Dist.*, No. 3, 211 Ark. 938, 203 S.W.2d 392 (1947').

§ 21. Sureties on official bonds — Qualifications — Bonding companies.

The sureties upon the official bonds of all State Officers shall be residents of, and have sufficient property within the State, not exempt from sale under execution, attachment or other process of any court, to make good their bonds and the sureties upon the official bonds of all county officers shall reside within the counties where such officers reside, and shall have sufficient property therein, not exempt from such sale, to make good their bonds; provided, however, that any surety, bonding or guaranty company, organized for the purpose of doing a surety, or bonding business, and authorized to do business, in this State, may become surety on the bonds of all State, County and Municipal Officers under such regulations as may be prescribed by law. [As amended by Const. Amend. 4.]

Publisher's Notes. Minor changes in punctuation were made and the proviso was added by Ark. Const. Amend. 4.

CASE NOTES

ANALYSIS

Nonresidents.

Regulation by legislature.

Nonresidents.

The court may not accept a nonresident of the county as a surety on the official bond of a county officer. *Hyner v. Dickinson*, 32 Ark. 776 (1878).

Regulation by Legislature.

The legislature may impose other safeguards on sureties, and an act is valid which requires the property of sureties be within the county and the requisite amount to be over debts and liabilities as well as exemptions. *Oliver v. Martin*, 36 Ark. 134 (1880).

The legislature is authorized to pre-

scribe the kind and character of bonds that all state and county officers should make and file. *Gower v. Looney*, 199 Ark. 272, 133 S.W.2d 451 (1939).

§ 22. Constitutional amendments.

Either branch of the General Assembly, at a regular session thereof, may propose amendments to this Constitution; and if the same be agreed to by a majority of all members elected to each house, such proposed amendments shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county, where a newspaper is published, for six months immediately preceding the next general election for Senators and Representatives, at which time the same shall be submitted to the electors of the State, for approval or rejection; and if a majority of the electors voting at such election adopt such amendments, the same shall become a part of this Constitution. But no more than three amendments shall be proposed or submitted at the same time. They shall be so submitted as to enable the electors to vote on each amendment separately.

Cross References. Additional Constitutional amendments authorized, Art. Const., Amend. 70, § 2. Initiative, Ark. Const. Amend. 7. Time for advertisement of constitutional amendment, § 16-3-102.

RESEARCH REFERENCES

Am. Jur. 16 Am. Jur. 2d, Constitutional Law, § 19 et seq.
C.J.S. 16 C.J.S., Constitutional Law, § 6 et seq.
UALR L.J. Arkansas Law Survey, Jeffrey, Nelson, Nunnally and Robertson, Constitutional Law, 7 UALR L.J. 179.
Kennedy, Initiated Constitutional Amendments in Arkansas: Strolling Through the Mine Field, 9 UALR L.J. 1.
DiPippa, The Constitutionality of the Arkansas Ballot Question Disclosure Act, 12 UALR L.J. 481.
Niswanger, A Practitioner's Guide to Challenging and Defending Legislatively Proposed Constitutional Amendments in Arkansas, 17 UALR L.J. 765.

CASE NOTES

ANALYSIS

- Construction.
- Appellate jurisdiction.
- Approval by Governor.
- Ballot title.
- Differing versions.
- Evidence of adoption.
- Initiation by legislature.
- Injunctions.
- Journal entries.
- Majority of electors.
- Publication.
- Requirement of separate vote.
- Three amendments at a time.

Construction.

While the words "for six months," as used in this section, present some ambiguity with respect to the number of publications required, they present none as to when such amendments must first be published. *Walmsley v. McCuen*, 318 Ark. 269, 885 S.W.2d 10 (1994).

Appellate Jurisdiction.

Where a constitutional amendment is proposed by the General Assembly and, accordingly, is governed by this section, jurisdiction of the state supreme court is appellate only. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

Approval by Governor.

A constitutional amendment proposed by the legislature had nothing added to or subtracted from its validity by the governor's approval. *Coulter v. Dodge*, 197 Ark. 812, 125 S.W.2d 115 (1939).

Ballot Title.

The courts would not overturn the approval of the constitutional amendment requiring competitive bidding for the purchase of printing, stationery, and supplies by a substantial majority of voters on the alleged ground of misleading ballot title, particularly in absence of constitutional or statutory provision for specifications for a ballot title for the amendment proposed by the general assembly and published before submission. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).

This section does not specifically require a ballot title; all that is required is that proposed amendments under this section be so submitted as to enable the electors to vote on each amendment separately; thus, the purpose of the ballot title is not to inform the voter, but merely to distinguish and identify the amendment. *Becker v. Riviere*, 277 Ark. 252, 641 S.W.2d 2 (1982).

It is not required that a ballot title contain a synopsis of the proposed amendment and cover every detail of it. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

Standard of review applied to ballot titles under this section is: (1) whether the ballot title is sufficient to "distinguish and identify" the proposal, and (2) whether the ballot title is a "manifest fraud upon the public." This is a different and less demanding standard than is employed for Ark. Const., amend. 7 initiatives. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

There is no deceit in using the same title on two proposed amendments separated by eight years when both deal with the same subject matter. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

Use of the date "1989" in the popular name "The 1989 Interest Rate Control Amendment" which was being voted on in 1990, not 1989, was not misleading and did not give partisan coloring to the proposal. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

The Supreme Court refused to overrule earlier cases that require ballot title reviews to be evaluated under the manifest-fraud-on-the-public standard. *Thiel v. Priest*, 342 Ark. 292, 28 S.W.3d 296 (2000).

Differing Versions.

Where the final passage by the house of a proposed constitutional amendment did not reflect an unrecorded amendment adopted by viva voce vote, so that the house and senate versions of the proposed amendment differed, the requirements of this section had not been met and the proposed amendment was not placed on the election ballot. *Jernigan v. Niblock*, 260 Ark. 406, 540 S.W.2d 593 (1976).

Evidence of Adoption.

The legislature may provide rules of evidence for determining whether an amendment to the Constitution has been adopted by the required vote. *Saint Louis S.W. Ry. v. Kavanaugh*, 78 Ark. 468, 96 S.W. 409 (1906).

Initiation by Legislature.

Amendments proposed by the legislature are entirely different from those initiated under Amendment No. 7 and are governed by an entirely different procedure. Amendment No. 7 does not apply to the procedure submitted by the legislature. *Berry v. Hall*, 232 Ark. 648, 339 S.W.2d 433 (1960).

The Constitution and all its amendments fail to disclose any provision that gives the Arkansas Supreme Court original jurisdiction in a case attacking the regularity of submission to the voters of a constitutional amendment proposed by the legislature. *Berry v. Hall*, 232 Ark. 648, 339 S.W.2d 433 (1960).

Where the General Assembly met in January of 1979 and adopted a resolution indefinitely extending its regular biennial session beyond the 60 days, where the assembly passed a resolution in April of 1979 which stated that the assembly had completed its essential business and was recessing for 20 months until the next regular session in January of 1981, but that the assembly could reconvene at any time prior to that time, and where the assembly did reconvene in January of 1980 and proposed three amendments to the constitution, two of the three proposed amendments were invalid under this section for not being proposed during a reg-

ular session because they were proposed for the first time during the reconvened session in January of 1980; however, the third proposed amendment was valid because it had been considered and worked on during the regular 60-day session in 1979. *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

Injunctions.

Issue of the failure of the Secretary of State to comply with the dictates of this section in publishing amendment and an injunction to prohibit placement of that amendment on the ballot should be brought in chancery court. *McCuen v. Harris*, 321 Ark. 458, 902 S.W.2d 793 (1995).

Journal Entries.

The omission of house amendments to a senate resolution proposing a constitutional amendment from the senate journals invalidates the amendment, since the amendment must be entered in extenso with the yeas and nays thereon. *McAdams v. Henley*, 169 Ark. 97, 273 S.W. 355 (1925).

A joint resolution to submit an amendment to the Constitution, introduced in the senate and approved without change by senate and house, was properly authorized where the resolution was spread at length on the senate journal but only a synopsis was entered upon the house journal. *Coulter v. Dodge*, 197 Ark. 812, 125 S.W.2d 115 (1939).

The failure of the general assembly in a regular session to enter proposed constitutional amendments at length on the journals with the yea and nay votes could not be cured by subsequent amendatory action at a special session and invalidated the amendment. *Bryant v. Rinke*, 252 Ark. 1043, 482 S.W.2d 116 (1972).

Majority of Electors.

The constitutional requirement that amendments be voted on at the general election for senators and representatives means only that the amendment be voted on at that election and the vote on con-

gressmen is not the measure of the number of persons voting. *Saint Louis S.W. Ry. v. Kavanaugh*, 78 Ark. 468, 96 S.W. 409 (1906).

A constitutional amendment proposed by the legislature was adopted where approved by a majority of those voting thereon, though not approved by a majority of those voting at the general election. *Hildreth v. Taylor*, 117 Ark. 465, 175 S.W. 40 (1915); *Combs v. Gray*, 170 Ark. 956, 281 S.W. 918 (1926).

Publication.

Proposed amendments to the Constitution originated under initiative petitions need be filed with the Secretary of State only four months prior to the election thereon and need not comply with the constitutional requirement that proposed amendments be published for six months prior to the election when proposed by the legislature. *Grant v. Hardage*, 106 Ark. 506, 153 S.W. 826 (1913).

The full text of an amendment referred to the electors in accordance with this section must be published six months prior to the general election to which it is subject. *Walmsley v. McCuen*, 318 Ark. 269, 885 S.W.2d 10 (1994).

Requirement of Separate Vote.

This section only requires that proposals by general assembly be so submitted as to enable people to vote on each amendment separately. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).

Three Amendments at a Time.

The constitutional amendment providing for the initiation of constitutional amendments by the people does not change the limitation that only three such amendments may be submitted at the same time. *State ex rel. City of Little Rock v. Donaghey*, 106 Ark. 56, 152 S.W. 746 (1912).

Cited: *Rice v. Palmer*, 78 Ark. 432, 96 S.W. 396 (1906); *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995); *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001).

§ 23. [Repealed.]

Publisher's Notes. This section was repealed by Ark. Const. Amend. 56, § 5.

§ 24. Election contests.

The General Assembly shall provide by law the mode of contesting elections in cases not specifically provided for in this Constitution.

RESEARCH REFERENCES

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

CASE NOTES

ANALYSIS

Circuit court jurisdiction.
Primary elections.

Circuit Court Jurisdiction.

A statute conferring original jurisdiction on the circuit court to hear and determine contests for the office of county and probate judge is valid. *Sumpter v. Duffie*, 80 Ark. 369, 97 S.W. 435 (1906).

The circuit court has residuary jurisdiction of suits contesting municipal election. *Doherty v. Cripps*, 82 Ark. 529, 102 S.W. 394 (1907); *Purdy v. Glover*, 199 Ark. 63, 132 S.W.2d 821 (1939).

The office of school director is a county office within the meaning of a statute providing for the decision of election contests of such county offices in the circuit court. *Ferguson v. Wolchansky*, 133 Ark. 516, 202 S.W. 826 (1918).

The circuit court has residuary jurisdic-

tion over election contests, whether or not they are called such, or proceedings in the nature of quo warranto, or suits to oust usurpers, where jurisdiction over such claims is not placed elsewhere. *Purdy v. Glover*, 199 Ark. 63, 132 S.W.2d 821 (1939).

The circuit court has jurisdiction to hear election contests for consolidation of school districts. *Adams v. Dixie Sch. Dist. No. 7*, 264 Ark. 178, 570 S.W.2d 603 (1978).

Primary Elections.

The provision that the legislature shall provide by law the mode of contesting elections refers only to elections for office and not for nominations. *Hester v. Bourland*, 80 Ark. 145, 95 S.W. 992 (1906).

Cited: *Jones v. Dixon*, 227 Ark. 955, 302 S.W.2d 529 (1957); *Reed v. Baker*, 254 Ark. 631, 495 S.W.2d 849 (1973).

§ 25. Seal of state.

The present seal of the State shall be and remain the seal of the State of Arkansas until otherwise provided by law, and shall be kept and used as provided in this Constitution.

Cross References. Official seals, § 1-4-108.

§ 26. Officers eligible to executive or judicial office.

Militia officers, and officers of the public schools, and Notaries may be elected to fill any executive or judicial office.

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey, Jeffrey, Nelson, Nunnally and Robertson, Constitutional Law, 7 UALR L.J. 179.

CASE NOTES

ANALYSIS

Notaries.

Officers of public schools.

United States Reserve officer.

Notaries.

There is no incompatibility between the office of notary public and executive and judicial offices, but only qualified electors are thereby qualified to hold the office of notary public. *State ex rel. Gray v. Hodges*, 107 Ark. 272, 154 S.W. 506 (1913).

Officers of Public Schools.

The fact that board members are county public school officers makes them no less

"officers of the public schools." Therefore, § 6-12-101(b) is unconstitutional to the extent it precludes county board of education members from holding elected executive or judicial office because it is in conflict with this section of the constitution. *Craighead County Bd. of Educ. v. Henry*, 295 Ark. 242, 748 S.W.2d 132 (1988).

United States Reserve Officer.

The reference in this section to "militia officers" does not include a United States Army Reserve officer, who is appointed by the president and is not subject to any control by the State of Arkansas. *Jones v. Clark*, 278 Ark. 119, 644 S.W.2d 257 (1983).

§ 27. Local improvements — Municipal assessments.

Nothing in this Constitution shall be so construed as to prohibit the General Assembly from authorizing assessments on real property for local improvements, in towns and cities, under such regulations as may be prescribed by law; to be based upon the consent of a majority in value of the property-holders owning property adjoining the locality to be affected; but such assessments shall be ad valorem and uniform.

CASE NOTES

ANALYSIS

Approval of property owners.

—Eligibility to approve.

—Legislature acting.

—Petition for improvement.

—Street railway.

Assessment of benefits.

—Homesteads.

—Located outside city.

—Railroad real property.

—Valuation of property.

Combination of improvements.

Duties of city councils.

Improvement by individuals.

Improvement districts.

—Creation of indebtedness.

—District created under void law.

—Extending authority of district.

Local improvement.

Property joining.

Approval of Property Owners.

An assessment for local improvements must be approved by a majority of the property owners adjoining; an assessment

to pay the cost of an improvement in another district cannot be imposed. *Rector v. Board of Imp.*, 50 Ark. 116, 6 S.W. 519 (1887).

The provision, that a majority in value of property owners must consent to a local improvement by assessment, is mandatory and jurisdictional. *Craig v. Board of Imp.*, 84 Ark. 390, 105 S.W. 867 (1907); *Improvement Dist. No. 1 v. St. Louis Ry.*, 99 Ark. 508, 139 S.W. 308 (1911); *Bell v. Phillips*, 116 Ark. 167, 172 S.W. 864 (1914); *Hodges v. Board of Imp.*, 117 Ark. 266, 174 S.W. 542 (1915); *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927).

"Property holders owning property" means property owners owning property. *Boles v. Kelley*, 90 Ark. 29, 117 S.W. 1073 (1909).

The word "owner" used in the Constitution in regard to local improvement districts means the absolute owner or the owner in fee. *Smith v. Improvement Dist. No. 14*, 108 Ark. 141, 156 S.W. 455, 44 L.R.A. (n.s.) 696 (1913).

The owner of property must sign petitions for improvement, although not necessarily in his own hand. *Colquitt v. Stevens*, 111 Ark. 314, 163 S.W. 1141 (1914).

The consent of property owners must be actual or express and not merely implied. *Hamilton v. Board of Imp.*, 123 Ark. 327, 185 S.W. 440 (1916); *White v. Loughborough*, 125 Ark. 57, 188 S.W. 10 (1916).

Where an addition is made to an original improvement district, one contract and one bond issue for improvements in both districts cannot be made without the approval of the property owners in the original district. *Bahlau v. Bloom*, 154 Ark. 349, 242 S.W. 547 (1922).

Rural property owners in forming drainage district for purpose of controlling flood waters in area were not prohibited by provisions of this section from including greater part of city in district even though consent of property owners in city was not obtained. *Curlin v. Harding Drain Imp. Dist.*, 221 Ark. 412, 253 S.W.2d 345 (1952).

—Eligibility to Approve.

The signature of the husband of a property owner, if ratified by the owner, is sufficient, as a vendor holding title to land which is contracted to be sold, and also a signature by one as agent and attorney of the owner, although the power of attorney is not in writing. *Board of Imp. Dist. No. 5 v. Offenhauser*, 84 Ark. 257, 105 S.W. 265 (1907).

Assessments for local improvements to be approved by a majority of the property holders owning adjoining property may be approved by such property owners regardless of whether or not they are residents. *Boles v. Kelley*, 90 Ark. 29, 117 S.W. 1073 (1909).

The holder of a 99-year-lease on property included within a street improvement district is not the owner of the property within the constitutional meaning. *Smith v. Improvement Dist. No. 14*, 108 Ark. 141, 156 S.W. 455 (1913).

A life tenant is not the owner of property and may not sign a petition for an improvement district. *Colquitt v. Stevens*, 111 Ark. 314, 163 S.W. 1141 (1914).

Holders of dower interests and husbands (when wives hold title to property) are not property owners within the constitutional meaning. *Colquitt v. Stevens*, 111 Ark. 314, 163 S.W. 1141 (1914).

Real property owners eligible to sign petitions for improvements include those holding by inheritance or will. *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917).

Petitions for improvement districts may be signed by the agents of the owners of real property, and by guardians for their wards by one partner of a partnership, and by officers of corporations where such establishments own real property. *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917).

—Legislature Acting.

The legislature may create a road district and assess the affected property owners even though part of the road is a street through an incorporated town or city without having the approval of the affected property owners. *Summers v. Conway & Damascus Rd. Imp. Dist.*, 139 Ark. 277, 213 S.W. 775 (1919).

—Petition for Improvement.

Although a petition for public improvement is required to state that the cost is to be assessed and charged on the real property, a petition which sufficiently shows the consent of the property owners to the improvement is valid although it does not contain the required statement. *Mustin v. Brain*, 135 Ark. 98, 204 S.W. 621 (1918).

—Street Railway.

A street railway is personal property and should not be included in determining whether a majority in value of property owners had signed a petition for local improvement. *Lenon v. Brodie*, 81 Ark. 208, 98 S.W. 979 (1906).

Assessment of Benefits.

A board of levee inspectors may determine the rate of taxation and the lands subject thereto for improvements in a levee district. *Davis v. Gaines*, 48 Ark. 370, 3 S.W. 184 (1886).

The power to tax property to be specially benefitted by a levy may be delegated to a levee board, and liability for the assessment depends upon the fact that property will be benefitted and not upon the fact that lands are subject to overflow. *Carson v. St. Francis Levee Dist.*, 59 Ark. 513, 27 S.W. 590 (1892).

The only theory upon which an assessment may be made is that a special benefit will result to the particular tract because of the improvement, and to assess a tract

in excess of the value of such benefits is an attempt to take private property for a public use without just compensation. *Kirst v. Street Imp. Dist. No. 120*, 86 Ark. 1, 109 S.W. 526 (1908); *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

This section applies only to assessments purely local to a municipality and does not include districts formed so as to include property within as well as without the municipal limits. *Butler v. Board of Dirs.*, 99 Ark. 100, 137 S.W. 251 (1911); *Curlin v. Harding Drain Imp. Dist.*, 221 Ark. 412, 253 S.W.2d 345 (1952).

—Homesteads.

A homestead is not exempt from the lien for assessments for local improvements. *Ahern v. Board of Imp. Dist. No. 3*, 69 Ark. 68, 61 S.W. 575 (1901).

—Located Outside City.

An improvement to be made entirely outside a town, while the improvement district lies partly within and partly without the town limits, is a valid assessment if any benefits would be derived by the property within the municipality. *Cox v. Road Imp. Dist. No. 8*, 118 Ark. 119, 176 S.W. 676 (1915).

As legislature is vested with all powers not prohibited by Constitution and Constitution requires only that assessments be ad valorem, uniform and with consent of a majority in value of the affected property holders, legislature could authorize municipality to tax lands lying outside city limits by assessment of benefits on said lands in sewer improvement district. *Smart v. Gates*, 234 Ark. 858, 355 S.W.2d 184 (1962).

—Railroad Real Property.

The right of way and roadbed of a railroad are real estate and are subject to local assessments in a municipal improvement district. *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927).

—Valuation of Property.

The total valuation of real property within an improvement district is governed by the valuation placed upon the property as shown by the last county assessment. *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917).

Combination of Improvements.

Where two improvements may be combined into one improvement district with-

out prejudice to the rights of any of the property owners, they may be so combined. *Wilson v. Blanks*, 95 Ark. 496, 130 S.W. 517 (1910).

Duties of City Councils.

A city council, which refuses to levy an additional assessment on the real property of an improvement district to complete an improvement, as requested by the board of improvements, may be so compelled by mandamus. *City of Little Rock v. Board of Imps.*, 42 Ark. 152 (1883).

The legislature may impose the duty of forming improvement districts and defining their boundaries upon the city councils. *Lenon v. Brodie*, 81 Ark. 208, 98 S.W. 979 (1906).

The legislature may constitute a city council the tribunal to determine whether or not petitions for improvements within the city were signed by a majority of the owners of real property in the districts. *Jacobs v. Paris*, 131 Ark. 28, 198 S.W. 134 (1917).

A city council has no right to refuse to pass an annexation ordinance unless a majority of the property owners did not sign the petition or there are obvious mistakes in the property included, or excluded. *City of Little Rock v. Boullion*, 171 Ark. 245, 284 S.W. 745 (1926).

Improvement by Individuals.

Cities may require the owners of lots to build and maintain suitable sidewalks, but such an ordinance must be uniform and apply to all the property within the district and be reasonable and not oppressive. *James v. City of Pine Bluff*, 49 Ark. 199, 4 S.W. 760 (1886).

Improvement Districts.

The legislature may authorize the creation of improvement districts embracing the entire area of a city or town. *Crane v. City of Siloam Springs*, 67 Ark. 30, 55 S.W. 955 (1899).

A road improvement district laying partly within and partly without a town and not consented to by a majority in value of the property owners to be affected is valid since the constitutional provision applies to improvements purely local to a municipality. *Cox v. Road Imp. Dist. No. 8*, 118 Ark. 119, 176 S.W. 676 (1915).

An act increasing the size of an improvement district and extending the improvement is valid if the improvement in

the annexed territory is paid for solely by assessments on the property in that territory. *White v. Loughborough*, 125 Ark. 57, 188 S.W. 10 (1916).

The legislature may organize an improvement district inside a city or town to make an improvement situated partially outside the city or town. *Mullins v. City of Little Rock*, 131 Ark. 59, 198 S.W. 262 (1917).

—Creation of Indebtedness.

An improvement district may issue interest-bearing evidences of indebtedness, and in so doing acts as the agent of the property owners affected by the improvement. *Fitzgerald v. Walker*, 55 Ark. 148, 17 S.W. 702 (1891).

—District Created Under Void Law.

The creation of a valid improvement district is not invalidated by an unconstitutional statute which attempted to raise the classification of the city in question and where the corporate functions of officers under such statute were attempted to be validated for the time that they acted under the void statute. *Cotten v. Hughes*, 125 Ark. 126, 187 S.W. 905 (1916).

—Extending Authority of District.

An act giving a wharf improvement district, already legally formed, additional authority is valid if the constitutional provisions are complied with. *Lambert v. Improvement Dist., No. 1*, 174 Ark. 478, 295 S.W. 730 (1927).

Local Improvement.

Legislative determination that a bridge is a local improvement, where the bridge is between two cities, is conclusive unless arbitrary and unreasonable. *Mullins v.*

City of Little Rock, 131 Ark. 59, 198 S.W. 262 (1917).

Property Joining.

The action of including property in an improvement district is conclusive of the fact that such property is adjoining the locality to be affected by the improvement. *City of Little Rock v. Katzenstein*, 52 Ark. 107, 12 S.W. 198 (1889); *McAllister v. Forrest City St. Imp. Dist., No. 11*, 274 Ark. 372, 626 S.W.2d 194 (1981').

A city council may make an assessment for a public park upon property not actually touching the park grounds. *Matthews v. Kimball*, 70 Ark. 451, 66 S.W. 651 (1902).

"Property joining the locality to be affected" is any property adjoining or near the improvement which is physically affected, or the value of which is commercially affected, to a degree in excess of the effect upon the property in the city generally, no matter how slight the excess benefit. *Board of Imp. Dist. No. 5 v. Offenhauser*, 84 Ark. 257, 105 S.W. 265 (1907); *Freeze v. Improvement Dist. No. 16*, 126 Ark. 172, 189 S.W. 660 (1916).

Cited: *Peay v. City of Little Rock*, 32 Ark. 31 (1877); *Town of Monticello v. Banks*, 48 Ark. 251, 2 S.W. 852 (1886); *Ahern v. Board of Imp. Dist. No. 3*, 69 Ark. 68, 61 S.W. 575 (1901); *Board of Imp. Dist., No. 60 v. Cotter*, 71 Ark. 556, 76 S.W. 552 (1903); *Kelley Trust Co. v. Paving Dist.*, 184 Ark. 408, 43 S.W.2d 71 (1931); *Kelley Trust Co. v. Paving Imp. Dist.*, 185 Ark. 397, 47 S.W.2d 569 (1932); *Searcy v. Headlee*, 222 Ark. 719, 262 S.W.2d 288 (1953); *Ketcher v. Mayor of N. Little Rock*, 2 Ark. App. 315, 621 S.W.2d 12 (1981).

ARTICLE 20

"HOLFORD" BONDS NOT TO BE PAID

The General Assembly shall have no power to levy any tax, or make any appropriations, to pay either the principal or interest, or any part thereof, of any of the following bonds of the State, or the claims, or pretended claims, upon which they may be based, to-wit: Bonds issued under an act of the General Assembly of the State of Arkansas, entitled, "An act to provide for the funding of the public debt of the State," approved April 6th, A. D. 1869, and numbered from four hundred and ninety-one to eighteen hundred and sixty, inclusive, being the "funding bonds," delivered to F. W. Capers, and sometimes called "Holford bonds;"

or bonds known as railroad aid bonds, issued under an act of the General Assembly of the State of Arkansas, entitled, An act to aid in the construction of railroads, approved July 21, A. D. 1868; or bonds called "levee bonds," being bonds issued under an act of the General Assembly of the State of Arkansas, entitled "An act providing for the building and repairing the public levees of the State, and for other purposes," approved March 16, A. D. 1869, and the supplemental act thereto, approved April 12, 1869; and the act entitled "An act to amend an act entitled an act providing for the building and repairing of the public levees of this State," approved March 23, A. D. 1871, and any law providing for any such tax or appropriation, shall be null and void. [Added by Const. Amend. 1.]

SCHEDULE

SECTION.

1. Retention of existing laws — Sealed instruments.
2. [Repealed.]
3. First general election.
4. Qualifications of voters.
5. Notice of election.
6. Governor's proclamation.
7. State board of supervisors.
8. County board of supervisors.
9. Poll books and ballot boxes — First election.
10. Copies of Constitution to be distributed.
11. Judges and clerks of first election.
12. Conduct of first election.
13. Style of ballot.
14. Manner of voting.
15. Dram shops to be closed — First election.

SECTION.

16. Hours of voting — Counting of ballots — Returns.
17. Publication of result.
18. Commissions — Officers elected at first election.
19. Election of representatives and senators — First election.
20. When officers to enter upon duties.
21. Prior incumbents to vacate office.
22. First session of General Assembly.
23. Transfer of jurisdiction of courts.
24. Present incumbents to hold until successors qualify.
25. Fraud in first election.
26. Tenure of officers elected.
27. Appropriation for expenses of election.
28. Salaries of officers.

RESEARCH REFERENCES

Am. Jur. 16 Am. Jur. 2d, Constitutional Law, § 44.

C.J.S. 16 C.J.S., Constitutional Law, § 15.

§ 1. Retention of existing laws — Sealed instruments.

All laws now in force, which are not in conflict or inconsistent with this Constitution, shall continue in force until amended or repealed by the General Assembly, and all laws exempting property from sale on execution, or by decree of a court, which were in force at the time of the adoption of the Constitution of 1868, shall remain in force with regard to contracts made before that time. Until otherwise provided by law no distinction shall exist between sealed and unsealed instruments, con-

cerning contracts between individuals, executed since the adoption of the Constitution of 1868; Provided: That the statutes of limitation with regard to sealed and unsealed instruments in force at that time, continue to apply to all instruments afterward executed, and until altered or repealed.

CASE NOTES

ANALYSIS

Constitutionality of prior laws.
Courts.
Dower.
Homestead.
Limitation on actions.
Seals.

Constitutionality of Prior Laws.

Even if Scott County had less than 900 square miles in 1851 as result of Act of 1851 creating Sebastian County out of part of area of Scott County, since reduction of area of Scott County below constitutional amount of 1836 did not appear on the face of the Act of 1851, and no litigation was filed challenging validity of act until present time, such constitutional argument cannot now be filed, especially since Constitution of 1874 cured the unchallenged defect now raised by defendant in a trespass suit. *Pruitt v. Sebastian County Coal & Mining Co.*, 215 Ark. 673, 222 S.W.2d 50 (1949).

Courts.

Provisions providing for special terms of court in existence at the adoption of the Constitution of 1874 have not been repealed or amended by the general assembly and, therefore, by the express provisions of the Constitution they continue in force to this day. *Bell v. State*, 120 Ark. 530, 180 S.W. 186 (1915).

Laws relating to appeals from county courts were revived. *Horn v. Baker*, 140 Ark. 168, 215 S.W. 600 (1919).

Dower.

The adoption of the Constitution of 1874 did not repeal statute relating to allotment of dower. *Johnson v. Johnson*, 84 Ark. 307, 105 S.W. 869 (1907).

Homestead.

As to contracts made before the adoption of the Constitution of 1868, the

Homestead Act of 1852 is revived by this section. *Lindsay v. Norrill*, 36 Ark. 545 (1880).

Limitation on Actions.

This section renews the application of the statute of limitations of ten years (existing at the date of the adoption of the Constitution of 1868) to sealed instruments executed after that date and not barred by the limitation applicable to unsealed instruments when this Constitution was adopted. *Dyer v. Gill*, 32 Ark. 410 (1877); *Stephens v. Shannon*, 43 Ark. 464 (1884).

The ten-year statute of limitations was applicable to an instrument sued on bearing date before the adoption of the Constitution of 1868 and appearing on its face to be under seal. *Smith v. Carder*, 33 Ark. 709 (1878).

The effect of the proviso is to revive the distinction between sealed and unsealed instruments so that the holder of a note has ten years to sue provided the maker has affixed a scrawl to his signature; whereas if there is no scrawl, he has but five. *Vaughn v. Norwood*, 44 Ark. 101 (1884).

Seals.

This section continues in force, subject to legislation, the provisions of the Constitution of 1868 abolishing private seals, but limits its application to instruments executed after the adoption of that Constitution. *Dyer v. Gill*, 32 Ark. 410 (1877); *Stephens v. Shannon*, 43 Ark. 464 (1884).

If this section is applicable to conveyances of real estate, the Constitution did not repeal or modify the law in force at its adoption, except as to the seal. *Daniel v. Garner*, 71 Ark. 484, 76 S.W. 1063 (1903).

§ 2. [Repealed.]

Publisher's Notes. This section was repealed by Acts 1975 (Extended Sess., 1976), No. 1143, § 2. The repeal of this section by Acts 1975 (Extended Sess., 1976), No. 1143, § 2, was reenacted by Acts 1987, No. 876, § 2.

§ 3. First general election.

An election shall be held at the several election precincts of every county in the State, on Tuesday, the thirteenth day of October, 1874, for Governor, Secretary of State, Auditor, Treasurer, Attorney-General, Commissioner of State Lands, (for two years unless the office is sooner abolished by the General Assembly), Chancellor, and Clerk of the separate Chancery court of Pulaski county, Chief Justice and two Associate Justices of the Supreme Court, a Circuit Judge and Prosecuting Attorney for each Judicial Circuit provided for in this Constitution; Senators and Representatives to the General Assembly, all county and township officers provided for in this Constitution; and also for the submission of this Constitution to the qualified electors of the State, for its adoption or rejection.

CASE NOTES

Cited: Glover v. Henry, 231 Ark. 111, 328 S.W.2d 382 (1959).

§ 4. Qualifications of voters.

The qualification of voters at the election, to be held as provided in this schedule, shall be the same as is now prescribed by law.

§ 5. Notice of election.

The State Board of Supervisors, hereinafter mentioned, shall give notice of said election immediately after the adoption of this Constitution by this Convention, by proclamation in at least two newspapers published at Little Rock, and such other newspapers as they may select. And each county board of Supervisors, shall give public notice in their respective counties, of said election, immediately after their appointment.

§ 6. Governor's proclamation.

The Governor shall also issue a proclamation enjoining upon all peace officers the duty of preserving good order on the day of said election, and preventing any disturbance of the same.

§ 7. State board of supervisors.

Augustus H. Garland, Gordon N. Peay and Dudley E. Jones are hereby constituted a State Board of Supervisors of said election, who shall take an oath faithfully and impartially to discharge the duties of

their office; a majority of whom shall be a quorum, and who shall perform the duties herein assigned them. Should a vacancy occur in said Board, by refusal to serve, death, removal, resignation, or otherwise; or if any member should become incapacitated from performing said duties, the remaining members of the Board shall fill the vacancy by appointment. But if all the places on said Board become vacant at the same time, the said vacancies shall be filled by the President of this Convention.

§ 8. County board of supervisors.

Said State Board shall at once proceed to appoint a Board of Election Supervisors for each County of this State, consisting of three men of known intelligence and uprightness of character, who shall take the same oath as above provided for the State Board. A majority of each Board shall constitute a quorum, and shall perform the duties herein assigned to them; and vacancies occurring in the County Boards shall be filled by the State Board.

§ 9. Poll books and ballot boxes — First election.

The State Board shall provide the form of poll books and each County Board shall furnish the Judges of each election precinct with three copies of the poll books in the form prescribed, and with ballot-boxes at the expense of the county.

§ 10. Copies of Constitution to be distributed.

The State Board of Supervisors shall cause to be furnished in pamphlet form a sufficient number of copies of this Constitution to supply each County Supervisor and Judge of Election with a copy, and shall forward the same to the County Election Boards for distribution.

§ 11. Judges and clerks of first election.

The Boards of County Election Supervisors shall at once proceed to appoint three Judges of Election for each election precinct in their respective counties; and the Judges shall appoint three Election Clerks for their respective precincts, all of whom shall be good, competent men, and take an oath as prescribed above. Should the Judges of any election precinct fail to attend at the time and place provided by law, or decline to act, the assembled electors shall choose competent persons, in the manner provided by law, to act in their place, who shall be sworn as above.

§ 12. Conduct of first election.

Said election shall be conducted in accordance with existing laws, except as herein provided. As the electors present themselves at the polls to vote, the judges of the election shall pass upon their qualifica-

tions and the clerks of the election shall register their names on the poll-books if qualified; and such registration by said clerks shall be a sufficient registration in conformity with the Constitution of this State, and then their votes shall be taken.

§ 13. Style of ballot.

Each elector shall have written or printed on his ticket "For Constitution," or "Against Constitution," and also the offices and the names of the candidates for the offices for whom he desires to vote.

§ 14. Manner of voting.

The judges shall deposit the tickets in the ballot-box; but no elector shall vote outside of the township or ward in which he resides. The names of the electors shall be numbered, and the corresponding numbers shall be placed on the ballots by the judges when deposited.

§ 15. Dram shops to be closed — First election.

All dram shops and drinking houses in this State shall be closed during the day of said election, and the succeeding night; and any person selling or giving away intoxicating liquors during said day or night shall be punished by fine, not less than two hundred dollars, for each and every offense, or imprisoned not less than six months, or both.

§ 16. Hours of voting — Counting of ballots — Returns.

The polls shall be opened at eight o'clock in the forenoon, and shall be kept open until sunset. After the polls are closed the ballots shall be counted by the judges at the place of voting, as soon as the polls are closed, unless prevented by violence or accident; and the results by them certified on the poll-books, and the ballots sealed up. They shall be returned to the County Board of Election Supervisors, who shall proceed to cast up the votes and ascertain and state the number of votes cast for the Constitution and the number cast against the Constitution, and also the number of votes cast for each candidate voted for for any office, and shall forthwith forward to the State Board of Supervisors, duly certified by them, one copy of the statement or abstracts of the votes so made out by them, retain one copy in their possession, and file one copy in the office of the County Clerk, where they shall also deposit, for safe-keeping, the ballots, sealed up, and one copy of the poll-books, retaining possession of the other copies.

§ 17. Publication of result.

The State Board of Supervisors shall at once proceed, on receiving such returns from the County Boards, to ascertain therefrom, and state the whole number of votes given for the Constitution, and the whole number given against it; and if a majority of all votes cast in favor of the

Constitution, they shall at once make public the fact by publication in two or more of the leading newspapers published in the city of Little Rock, and this Constitution, from that date, shall be in force; and they shall also make out and file, in the office of the Secretary of State an abstract of all the votes cast for the Constitution, and all votes cast against it; and also an abstract of all votes cast for every candidate voted for at the election, and file the same in the office of the Secretary of State, showing the candidate elected. They shall also make out and certify, and lay before each house of the General Assembly a list of the members elected to that house; and shall also make out, certify and deliver to the Speaker of the House of Representatives an abstract of all votes cast at the election, for any and all persons for the office of Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General and Commissioner of State Lands, and the said Speaker shall cast up the votes and announce the names of the persons elected to these offices. The Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney-General and Commissioner of State Lands chosen at said election shall qualify and enter upon the discharge of the duties of their respective offices within fifteen days after the announcement of their election as aforesaid.

§ 18. Commissions — Officers elected at first election.

All officers shown to be elected by the abstract of said election filed by the State Board of Supervisors in the office of the Secretary of State, required by this Constitution to be commissioned, shall be commissioned by the Governor.

§ 19. Election of representatives and senators — First election.

At said election the qualified voters of each County and Senatorial District, as defined in article eight of this Constitution, shall elect, respectively, Representatives and Senators according to the numbers and apportionment contained in said article. The Board of Election Supervisors of each county shall furnish certificates of election to the person or persons elected to the House of Representatives as soon as practicable after the result of the election has been ascertained; and such Board of Election Supervisors in each county shall make a correct return of the election for Senator or Senators to the Board of Election Supervisors of the county first named in the Senatorial apportionment, and said Board shall furnish certificates of election to the person or persons elected as Senator or Senators in said Senatorial district as soon as practicable.

§ 20. When officers to enter upon duties.

All officers elected under this Constitution, except the Governor,

Secretary of State, Auditor of State, Treasurer, Attorney-General and Commissioner of State Lands shall enter upon the duties of their several offices when they shall have been declared duly elected by said State Board of Supervisors, and shall have duly qualified. All such officers shall qualify and enter upon the duties of their offices within fifteen days after they have been duly notified of their election.

CASE NOTES

Delay in Taking Office.

The terms of office began on the date the result of the election to fill the offices was officially declared and the person elected

cannot postpone the date of the beginning of the term by delay in taking office. *Jewett v. McConnell*, 112 Ark. 291, 165 S.W. 954 (1914).

§ 21. Prior incumbents to vacate office.

Upon the qualification of the officers elected at said election the present incumbents of the offices for which the election is held shall vacate the same and turn over to the officers thus elected and qualified, all books, papers, records, moneys and documents belonging or pertaining to said offices by them respectively held.

§ 22. First session of General Assembly.

The first session of the General Assembly under this constitution shall commence on the first Tuesday after the second Monday in November, 1874.

§ 23. Transfer of jurisdiction of courts.

The County Courts provided for in this Constitution shall be regarded in law as a continuation of the Boards of Supervisors now existing by law, and the Circuit Courts shall be regarded in law as continuations of the Criminal Courts wherever the same may have existed in their respective counties: and the Probate Courts shall be regarded as continuations of the Circuit Courts for the business within the jurisdiction of such Probate Courts, and the papers and records pertaining to said courts and jurisdictions shall be transferred accordingly; and no suit or prosecution of any kind shall abate because of any change made in this Constitution.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

CASE NOTES

County Courts.

The county courts were continuations of the former boards of supervisors and were given exclusive original jurisdiction in all matters necessary to the internal improvement and local concerns of their respective counties. *Dodson v. Mayor of Ft. Smith*, 33 Ark. 508 (1878).

§ 24. Present incumbents to hold until successors qualify.

All officers now in office whose offices are not abolished by this Convention, shall continue in office and discharge the duties imposed on them by law, until their successors are elected and qualified under this Constitution. The office of Commissioner of State Lands shall be continued; Provided, That the General Assembly at its next session may abolish or continue the same in such manner as may be prescribed by law.

§ 25. Fraud in first election.

Any election officer, appointed under the provisions of this schedule, who shall fraudulently and corruptly permit any person to vote illegally or refuse the vote of any qualified elector, cast up or make a false return of said election, shall be deemed guilty of a felony, and on conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than ten years. And any person who shall vote when not a qualified elector, or vote more than once, or bribe any one to vote contrary to his wishes, or intimidate or prevent any elector by threats, menace or promises from voting, shall be guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary not less than one, nor more than five years.

§ 26. Tenure of officers elected.

All officers elected at the election provided for in this schedule shall hold their offices for the respective periods provided for in the foregoing Constitution, and until their successors are elected and qualified. The first general elections after the ratification of this Constitution shall be held on the first Monday of September A. D. 1876. Nothing in this Constitution and the schedule thereto shall be so construed as to prevent the election of congressmen at the time as now prescribed by law.

§ 27. Appropriation for expenses of election.

The sum of five thousand dollars is hereby appropriated out of any money in the treasury, not otherwise appropriated, to defray the expenses of the election provided for in this schedule, and the Auditor of State shall draw his warrants on the Treasurer for such expenses, not exceeding said amount, on the certificate of the State Board of Supervisors of election.

§ 28. Salaries of officers.

For the period of two years from the adoption of this Constitution, and until otherwise provided by law, the respective officers herein enumerated shall receive for their services the following salaries per annum:

For Governor, the sum of	\$3,500
For Secretary of State, the sum of	2,000
For Treasurer, the sum of	2,500
For Auditor, the sum of	2,500
For Attorney General, the sum of	2,000
For Commissioner of State Lands, the sum of	2,000
For Judges of Supreme Court, each, the sum of	3,500
For Judges of Circuit and Chancery Courts, each, the sum of	2,500
For Prosecuting Attorneys, each, the sum of	400
For members of the General Assembly, the sum of \$6 per day, and twenty cents per mile for each mile traveled in going to and returning from the seat of government over the most direct and practicable route.	

Publisher's Notes. This section has been superseded by a series of constitutional amendments. For current law, see Const., Amends. 21, 43 and 56.

Done in Convention, at Little Rock, the Seventh day of September in the year of our Lord one thousand eight hundred and seventy four and of the Independence of the United States the ninety-ninth.

In Witness Whereof, we have hereunto subscribed our names.
GRANDISON D. ROYSTON,
President of the Convention, and
Delegate from the County of Hempstead.

THOMAS W. NEWTON,
Secretary.

- A. M. RODGERS, Delegate from Benton County.
- HORACE H. PATTERSON, Delegate from Benton County.
- W. W. BAILEY, Delegate from Boone County.
- JNO. R. HAMPTON, Delegate from Bradley County.
- JOHN W. CYPERT, Delegate from Baxter County.
- BRADLEY BUNCH, Delegate from Carroll County.
- JESSE A. ROSS, Delegate from Clark County.
- H. F. THOMASON, Delegate from Crawford County.
- W. D. LEIPER, Delegate from Dallas County.
- WM. J. THOMPSON, Delegate from Woodruff County.
- JAMES A. GIBSON, Delegate from Arkansas County.
- HENRY W. CARTER, Delegate from Pike County.
- DANIEL F. REINHARDT, Delegate from Prairie County.
- ELIJAH MOSELEY, Delegate from Ouachita County.
- STEPHEN C. BATES, Delegate from Polk County.
- G. P. SMOOTE, Delegate from Columbia County.

D. L. KILLGORE, Delegate from Columbia County.
WILLIAM S. HANNA, Delegate from Conway County.
JOHN S. ANDERSON, Delegate from Craighead County.
J. G. FRIERSON, Delegate from Cross County.
E. FOSTER BROWN, Delegate from Clayton County.
JAS. P. STANLEY, Delegate from Drew County.
JOHN NIVEN, Delegate from Dorsey County.
WILLIAM W. MANSFIELD, Delegate from the County of Franklin.
JOHN DUNAWAY, Delegate from the County of Faulkner.
DAVIDSON D. CUNNINGHAM, Delegate from the County of Grant.
BEN H. CROWLEY, Delegate from the County of Greene.
H. M. RECTOR, Delegate from Garland County.
JN. R. EAKIN, Delegate from Hempstead County.
W. C. KELLY, Delegate from Hot Spring County.
J. W. BUTLER, Delegate from Independence County.
JAMES RUTHERFORD, Delegate from Independence County.
RANSOM GULLEY, Delegate from Izard County.
FRANKLIN DOSWELL, Delegate from Jackson County.
JNO. A. WILLIAMS, Delegate from Jefferson County.
SETH J. HOWELL, Delegate from Johnson County.
PHILIP K. LESTER, Delegate from Lawrence County.
J. H. WILLIAMS, Delegate from Little River County.
J. P. EAGLE, Delegate from Lonoke County.
REASON G. PUNTNEY, Delegate from Lincoln County.
MONROE ANDERSON, Delegate from Lee County.
JOHN CARROLL, Delegate from Madison County.
S. P. HUGHES, Delegate from Monroe County.
NICHOLAS W. CABLE, Delegate from Montgomery County.
CHARLES BOWEN, Delegate from Mississippi County.
R. K. GARLAND, Delegate from Nevada County.
HENRY G. BUNN, Delegate from Ouachita County.
W. H. BLACKWELL, Delegate from Perry County.
JNO. J. HORNOR, Delegate from Phillips County.
JNO. R. HOMER SCOTT, Delegate from the County of Pope.
JOHN MILLER, JR., Delegate from the County of Randolph.
SIDNEY M. BARNES, Delegate from the County of Pulaski.
JABEZ M. SMITH, Delegate from Saline County.
BEN B. CHISM, Delegate from the County of Sarber.
J. W. SORRELS, Delegate from Scott County.
W. S. LINDSEY, Delegate from Searcy County.
R. P. PULLIAM, Delegate from Sebastian County.
W. M. FISHBACK, Delegate from Sebastian County.
B. H. KINSWORTHY, Delegate from Sevier County.
LEWIS WILLIAMS, Delegate from Sharp County.
JOHN M. PARROTT, Delegate from Saint Francis County.
WALTER J. CAGLE, Delegate from Stone County.
HORATIO G. P. WILLIAMS, Delegate from Union County.
ROBT. GOODWIN, Delegate from Union County.

A. R. WITT, Delegate from Van Buren County.
R. P. POLK, Delegate from Phillips County.
T. W. THOMASON, Delegate from Washington County.
BENJAMIN F. WALKER, Delegate from Washington County.
M. F. LAKE, Delegate from Washington County.
JESSE N. CYPERT, Delegate from White County.
J. W. HOUSE, Delegate from White County.
JOSEPH T. HARRISON, Delegate from Yell County.
MARCUS L. HAWKINS, Delegate from Ashley County.
EDWIN R. LUCAS, Delegate from Fulton County.
BENJAMIN W. JOHNSON, Delegate from Calhoun County.
RODERICK JOYNER, Delegate from Poinsett County.

PROCLAMATION

By The

STATE BOARD OF ELECTION SUPERVISORS

Office of State Board of Election Supervisors,
Little Rock, Ark., October 30, 1874.

In pursuance of the provisions of section seventeen of the schedule to the Constitution recently framed for the State of Arkansas, the undersigned do hereby proclaim and make known that at a general election held on the thirteenth day of October, A. D. 1874, the following votes were cast "For" and "Against" said Constitution in the several counties of said State, as appears by the official returns made to said board by the county boards of election supervisors, to-wit:

[Here follows a tabulation of the vote by counties.]

Total Vote "For Constitution"	78,697
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Total Vote "Against Constitution"	24,807
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Majority "For Constitution"	53,890
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Given under our hands this thirtieth day of October, 1874.

U. M. ROSE,

DUDLEY E. JONES,

GORDON N. PEAY,

State Board of Election Supervisors.

AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874

ARTICLE.

1. "HOLFORD" BONDS, ARTICLE 20 ADDED.
2. REGULATION OF CARRIERS.
3. [REPEALED.]
4. SURETIES ON OFFICIAL BONDS.
5. PER DIEM AND MILEAGE OF GENERAL ASSEMBLY.
6. EXECUTIVE DEPARTMENT.
7. INITIATIVE AND REFERENDUM.
8. QUALIFICATIONS OF ELECTORS.
9. SUPREME COURT.
10. LIMITATION ON LEGISLATIVE AND TAXING POWER.
11. SCHOOL TAX.
12. TEXTILE MILLS, TAX EXEMPTION.
13. [REPEALED.]
14. LOCAL ACTS.
15. SALARIES OF STATE OFFICERS SALARIES OF STATE OFFICIALS.
16. JURY TRIAL.
17. [REPEALED.]
18. TAX TO AID INDUSTRIES.
19. PASSAGE OF LAWS.
20. STATE BONDS.
21. CRIMINAL PROSECUTIONS — SALARIES OF PROSECUTORS.
22. EXEMPTION OF HOMESTEADS FROM CERTAIN STATE TAXES.
23. APPORTIONMENT.
24. PROBATE COURTS — CIRCUIT AND COUNTY CLERKS.
25. [REPEALED.]
26. WORKERS' COMPENSATION.
27. EXEMPTING NEW MANUFACTURING ESTABLISHMENT FROM TAXATION.
28. REGULATING PRACTICE OF LAW.
29. FILLING VACANCIES IN OFFICE.
30. CITY LIBRARIES.
31. POLICE AND FIREFIGHTERS' RETIREMENT SALARIES AND PENSIONS.
32. COUNTY OR CITY HOSPITALS.
33. BOARDS AND COMMISSIONS GOVERNING STATE INSTITUTIONS.
34. RIGHTS OF LABOR.
35. WILD LIFE — CONSERVATION — ARKANSAS STATE GAME AND FISH COMMISSION.
36. POLL TAX EXEMPTION.
37. [REPEALED.]
38. COUNTY LIBRARIES.
39. VOTER REGISTRATION LAWS.
40. SCHOOL DISTRICT TAX.

ARTICLE.

41. ELECTION OF COUNTY CLERKS.
42. STATE HIGHWAY COMMISSION.
43. SALARIES AND EXPENSES OF JUDICIAL OFFICERS.
44. [REPEALED.]
45. APPORTIONMENT.
46. HORSE RACING AND PARI-MUTUEL WAGERING AT HOT SPRINGS.
47. STATE AD VALOREM TAX PROHIBITION.
48. [REPEALED.]
49. [REPEALED.]
50. ELECTIONS CONDUCTED BY BALLOT OR VOTING MACHINE (CONST., ART. 3, § 3, REPEALED AND NEW SECTIONS ADDED).
51. VOTER REGISTRATION.
52. COMMUNITY COLLEGES.
53. FREE SCHOOL SYSTEM.
54. PURCHASE OF PRINTING, STATIONERY AND SUPPLIES.
55. REVISION OF COUNTY GOVERNMENT.
56. CONSTITUTIONAL OFFICERS — GENERAL ASSEMBLY.
57. INTANGIBLE PERSONAL PROPERTY.
58. [REPEALED.]
59. TAXATION.
60. 1982 INTEREST RATE CONTROL AMENDMENT.
61. COUNTY ROAD TAX.
62. LOCAL CAPITAL IMPROVEMENT BONDS.
63. FOUR YEAR TERMS FOR STATE CONSTITUTIONAL OFFICERS.
64. MUNICIPAL COURT JURISDICTION [REPEALED EFFECTIVE JANUARY 1, 2005.]
65. REVENUE BONDS.
66. JUDICIAL DISCIPLINE AND DISABILITY COMMISSION.
67. JURISDICTION OF MATTERS RELATING TO JUVENILES AND BASTARDY.
68. ABORTION.
69. REPEAL OF AMENDMENT 44 (PROTECTION OF STATES' RIGHTS)
70. EXECUTIVE DEPARTMENT AND GENERAL ASSEMBLY SALARIES — RESTRICTIONS ON EXPENSE REIMBURSEMENTS.
71. PERSONAL PROPERTY TAXES.
72. CITY AND COUNTY LIBRARY AMENDMENT (CONST. AMENDS. 30 AND 38, §§ 1 AND 3, AMENDED, CONST. AMENDS. 30 AND 38, § 5, ADDED).
73. ARKANSAS TERM LIMITATION AMENDMENT.
74. SCHOOL TAX — BUDGET — APPROVAL OF

ARTICLE.

- TAX RATE (CONST., ART. 14, § 3, AS AMENDED BY CONST. AMEND. 11 AND CONST. AMEND. 40, AMENDED).
75. [ENVIRONMENTAL ENHANCEMENT FUNDS].
76. THE CONGRESSIONAL TERM LIMITS AMENDMENT OF 1996 (CONST. AMEND. 73, § 3, AMENDED).
77. [SPECIAL JUDGES (ARK. CONST. ART 7, §§ 9, 21, 22, REPEALED)]

ARTICLE.

78. [CITY AND COUNTY GOVERNMENT REDEVELOPMENT.]
79. [PROPERTY TAX RELIEF]
80. [QUALIFICATIONS OF JUSTICES AND JUDGES]
81. [PROTECTION OF THE SECRECY OF INDIVIDUAL VOTES.]

Publisher's Notes. Amendments to the Constitution have been inconsistently numbered both as proposed and as compiled in previous digests and compilations. This volume uses the numbers as

signed by the Secretary of State in 1932 and used in Pope's Digest of 1937, which omitted certain prior amendments which were deemed superseded by later amendments.

AMEND. 1. "HOLFORD" BONDS (CONST., ART. 20 ADDED).

Publisher's Notes. This amendment added Ark. Const., Art. 20, and is incorporated into the original Constitution. The amendment was proposed by the General Assembly on January 30, 1883 (See Acts 1883, p. 346), was declared adopted by the

Speaker of the House on January 14, 1885, and was so proclaimed by the Governor. The vote for the amendment was 119,806 and the vote against the amendment was 15,492.

AMEND. 2. REGULATION OF CARRIERS (CONST., ART. 17, § 10 AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 17, § 10, and is incorporated therein. The amendment was proposed by the General Assembly at the 1897 regular session (See Acts 1897, p.

92), declared to be adopted by the Speaker of the House on January 13, 1899, and so proclaimed by the Governor. The vote for the amendment was 63,703 and the vote against was 16,940.

AMEND. 3. COUNTY ROAD TAX [REPEALED.]

Publisher's Notes. This amendment was repealed by Ark. Const. Amend. 61, § 2.

AMEND. 4. SURETIES ON OFFICIAL BONDS (CONST., ART. 19, § 21 AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 19, § 21, and is incorporated therein. The amendment was proposed by the General Assembly at the 1899 regular session (See Acts 1899, p. 386). It was declared adopted by the

Speaker of the House on January 17, 1901, and so proclaimed by the Governor. The vote for the amendment was 65,825 and the vote against the amendment was 23,033.

CASE NOTES

Ballot Title.

The 1993 ballot title of proposed Ark. Const. Amend. 4, "An Amendment To Authorize A State Lottery, Nonprofit Bingo, Pari-Mutuel Wagering, And Additional Games Of Chance At Race Track Sites," failed to convey an intelligible idea of the

scope and import of proposed Ark. Const. Amend. 4 and the lengthy text was misleading and tinged with partisan coloring. *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994).

Cited: *Hudgens v. State*, 324 Ark. 169, 919 S.W.2d 939 (1996).

AMEND. 5. PER DIEM AND MILEAGE OF GENERAL ASSEMBLY (CONST., ART. 5, § 16 AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 5, § 16, and is incorporated therein. The amendment was declared to have been adopted by the Speaker of the House of Representatives on February 10, 1913 (See Acts 1913, p. 1525). The vote for the amendment was 103,246 and the vote against the amendment was 33,397.

Compensation of General Assembly

members is now governed by Ark. Const. Amend. 56, § 3; commencement of terms is governed by Ark. Const., Art. 8, § 6, as amended. See *Berry v. Gordon*, 237 Ark. 547 and 865, 376 S.W.2d 279 (1964), and *State ex. rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967), for discussion of implied repeal of this provision by subsequent amendments.

CASE NOTES

Ballot Title.

The 1993 ballot title of proposed Ark. Const. Amend. 5, which by popular name was to authorize one casino in Crittenden County, create an Arkansas Casino Gaming Commission, and permit the levy of casino taxes to fund crime prevention and law enforcement, was deficient because

the title omitted portions of the proposal which were important for a fair understanding of the amendment. Page v. McCuen, 318 Ark. 342, 884 S.W.2d 951 (1994).

Cited: *Hudgens v. State*, 324 Ark. 169, 919 S.W.2d 939 (1996).

AMEND. 6. EXECUTIVE DEPARTMENT AND OFFICERS (CONST., ART. 6, § 1, AMENDED AND SECTIONS ADDED).

Publisher's Notes. The enacting clause of the resolution proposing this amendment read: "That section No. 17 of article 5 of the Constitution of the State of Arkansas be amended to read as follows:

"Executive Department

"Section 1. To amend section 1 of article 6 of the Constitution of the State of Arkansas to read as follows: * * *."

The amendment then proceeds to

amend Art. 6, § 1, and to add five additional sections.

This amendment was submitted by the legislature (See Acts 1913, p. 1527) and voted upon at the general election, September 14, 1914, with returns as follows: for, 46,567; against, 45,206. It was declared to be in force in *Combs v. Gray*, 170 Ark. 956, 281 S.W. 918 (1926). See also *Brickhouse v. Hill*, 167 Ark. 513, 268 S.W. 865 (1925).

CASE NOTES

Cited: *Hudgens v. State*, 324 Ark. 169, 919 S.W.2d 939 (1996); *Kemp v. State*, 324 Ark. 178, 919 S.W.2d 943 (1996).

§ 1. Executive department.

Publisher's Notes. This section amended Ark. Const., Art. 6, § 1, and is incorporated therein.

This section was probably superseded by Ark. Const. Amend. 37, § 1, which was

repealed by Ark. Const. Amend. 56, § 5, and replaced by § 1 of that amendment. However, Ark. Const. Amend. 56, § 1, has probably been superseded by Ark. Const. Amend. 63, § 1.

§ 2. Executive power vested in Governor and Lieutenant Governor.

The executive power shall be vested in a Governor, who shall hold office for two years; a Lieutenant Governor shall be chosen at the same time and for the same term. The Governor and Lieutenant Governor elected next preceding the time when this section shall take effect shall hold office until and including the second Monday of September, and their successors shall be chosen at the general election in that year.

Publisher's Notes. This section has probably been superseded by Ark. Const. Amend. 63 as to terms of office. See also

Ark. Const., Art. 6, § 2, as to power of Governor.

CASE NOTES

Construction.

Section 7-7-105 does not conflict with this section, Ark. Const. Amend. 6, § 5, or Ark. Const., Art. 6, § 14. *Stratton v.*

Priest, 326 Ark. 469, 932 S.W.2d 321 (1996).

Cited: *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992).

§ 3. Election of Governor and Lieutenant Governor.

The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant Governor shall be elected, but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant Governor.

Publisher's Notes. In connection with this section, see Ark. Const., Art. 6, § 3.

§ 4. Lieutenant Governor acting as Governor.

In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of

war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the State.

Publisher’s Notes. This section probably supersedes Ark. Const., Art. 6, § 12, in its entirety and may supersede § 14 of that article in part.

RESEARCH REFERENCES

Ark. L. Rev. Wills, Constitutional Crisis: Can the Governor (or Other State Officeholder) Be Removed from Office in a Court Action after Being Convicted of a Felony?, 50 Ark. L. Rev. 221.

CASE NOTES

ANALYSIS

Construction.
Pardon power.
Registration of governor.
Residue of governor’s term.

Construction.

Amendment 29 of the state Constitution does not require the Lieutenant Governor to appoint a new Governor upon the Governor’s resignation since this section specifically provides for filling a vacancy in the Office of Governor. Bryant v. English, 311 Ark. 187, 843 S.W.2d 308 (1992).

Pardon Power.

The Arkansas Constitution gives the power to grant clemency to no other individual as long as the Governor is within the state and in full possession of his faculties; if he does not exercise his power

to grant or deny clemency, there is no one else able to do so and no constitutional rights are abrogated because the Governor cannot be impartial or objective. Pickens v. Tucker, 851 F. Supp. 363 (E.D. Ark.), aff’d, 23 F.3d 1477 (8th Cir. 1994).

Registration of Governor.

This section provides that, upon the resignation of the Governor, the Lieutenant Governor becomes the Governor of the State of Arkansas. Bryant v. English, 311 Ark. 187, 843 S.W.2d 308 (1992).

Residue of Governor’s Term.

This section provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at a special election. Bryant v. English, 311 Ark. 187, 843 S.W.2d 308 (1992).

§ 5. Qualifications and duties of Lieutenant Governor — Succession to the governorship.

The Lieutenant Governor shall possess the same qualifications of eligibility for the office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein in case of a tie vote. If during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

Publisher’s Notes. The third sentence of this section probably supersedes Ark. Const., Art. 6, § 13, in its entirety and may supersede § 14 of that article in part.

CASE NOTES

ANALYSIS

Construction.

Absence from state.

Authority of acting governor.

Lieutenant governor.

Oath.

Pardons.

Construction.

Section 7-7-105 does not conflict with this section, Ark. Const. Amend. 6, § 2, or Ark. Const., Art. 6, § 14. *Stratton v. Priest*, 326 Ark. 469, 932 S.W.2d 321 (1996).

Absence from State.

Absence from the state as used in this amendment means out of the state for any period of time, and though Lieutenant Governor was absent only for a few hours, bills vetoed during that particular time by the Acting Governor were vetoed in accordance with the law. *Walls v. Hall*, 202 Ark. 999, 154 S.W.2d 573 (1941).

Written proclamation of intended absence of Governor and Lieutenant Governor was not a necessary requisite to the validity of the acts of an Acting Governor. *Walls v. Hall*, 202 Ark. 999, 154 S.W.2d 573 (1941).

Authority of Acting Governor.

Power and authority vested under the Constitution in the Governor, in case of his absence from the state, devolves upon the Lieutenant Governor and, if he is also absent, upon the President of the Senate and, in case of his absence, upon the

Speaker of the Assembly, and there is no restriction upon the power and authority of either when acting as Governor. *Walls v. Hall*, 202 Ark. 999, 154 S.W.2d 573 (1941).

Lieutenant Governor.

Lieutenant Governor is a member of the executive department of state. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934).

This section addresses the subject of gubernatorial succession but does not apply to the office of Lieutenant Governor. *Stratton v. Priest*, 326 Ark. 469, 932 S.W.2d 321 (1996).

Oath.

President Pro Tempore of the Senate, having taken an oath on the floor of the Senate to perform his duties as president pro tempore, was not required to take an additional oath before entering his duties as Acting Governor since his duties embraced the duty to act as Governor in case of the absence of the Governor and Lieutenant Governor from the state. *Walls v. Hall*, 202 Ark. 999, 154 S.W.2d 573 (1941).

Pardons.

The Governor was held a biased determiner of defendant's clemency application by virtue of his representation of the State in defendant's appeal in 1977; accordingly, the Governor should be declared ineligible to determine the clemency issue and the Lieutenant Governor should be the determiner pursuant to this section. *Pickens v. Tucker*, 316 Ark. 811, 875 S.W.2d 835 (1994).

§ 6. Salary of Lieutenant Governor.

The Lieutenant Governor shall receive for his services an annual salary of two thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

Publisher's Notes. This section was held to be superseded by Ark. Const. Amend. 56, § 2, in *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964).

Effective Dates. Ark. Const. Amend. 6, § 7: second Monday in September, 1915.

CASE NOTES

Supersession.

This section is superseded by Ark.

Const. Amend. 56, § 2. *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964).

AMEND. 7. INITIATIVE AND REFERENDUM (CONST., ART. 5, § 1, AMENDED).

Publisher's Notes. This amendment amended Const., Art. 5, § 1, and is incorporated therein. The amendment was adopted at the general election of Nov. 2, 1920, by a vote of 86,360 for and 43,662

against. It was declared lost by the Speaker of the House on Jan. 15, 1921, but was declared adopted in *Brickhouse v. Hill*, 167 Ark. 513, 268 S.W. 865 (1925).

AMEND. 8. QUALIFICATIONS OF ELECTORS (CONST., ART. 3, § 1, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 3, § 1, and is incorporated therein. The amendment was proposed in the 1919 session (see Acts 1919, p. 489) and voted upon at the general election of 1920, with the following results: for, 87,237; against, 49,751. It was declared to be in force by the Attorney

General. See the decisions in *Brickhouse v. Hill*, 167 Ark. 513, 268 S.W. 865 (1925) and *Combs v. Gray*, 170 Ark. 956, 281 S.W. 918 (1926).

The poll tax requirement of this amendment was repealed by Ark. Const. Amend. 51, § 17.

AMEND. 9. SUPREME COURT.

Publisher's Notes. This amendment was proposed by the General Assembly at the 1923 session (see Acts 1923, p. 796) and approved at the general election of Oct. 7, 1924, by vote of 52,151 for and 40,955 against. It was declared adopted in

Brickhouse v. Hill, 167 Ark. 513, 268 S.W. 865 (1925).

Effective Dates. Ark. Const. Amend. 9, § 3: effective 60 days after approval and adoption by the people of the State of Arkansas.

RESEARCH REFERENCES

Ark. L. Rev. Minimum Standards of Judicial Administration — Arkansas, 5 Ark. L. Rev. 1, 4.

The Arkansas Judiciary at the Crossroads, 17 Ark. L. Rev. 259.

Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

§ 1. Enlargement — Sitting in division.

The Supreme Court shall be composed of five judges, one of whom shall be styled Chief Justice and elected as such, any three of whom shall constitute a quorum, and the concurrence of at least three judges shall in every case be necessary to a decision. Provided, if it should hereafter become necessary to increase the number of judges of the Supreme Court, the Legislature may provide for two additional judges and may also provide for the court sitting in divisions under such regulations as may be prescribed by law; provided further, that should the court sit in divisions, in all cases where the construction of the Constitution is involved, the cause shall be heard by the court in banc, and in all cases when a judge of a division dissents from the opinion therein, at the request of the Chief Justice, or such dissenting justice, the cause shall be transferred to the court in banc for its decision.

Publisher's Notes. This section probably supersedes Ark. Const., Art. 7, §§ 2 and 3.

Acts 1925, No. 205, § 1, increased the number of judges to seven.

CASE NOTES

Cited: *Citizens Bank v. Estate of Pettyjohn*, 282 Ark. 222, 667 S.W.2d 657 (1984).

§ 2. Compensation of judges.

The Supreme Court judges shall at stated times receive compensation for their services to be fixed by law. When the salary of the judges under this amendment to the Constitution shall have been established by law, such salary shall not thereafter be increased or diminished during their respective terms. Until otherwise provided by law, the judges of the Supreme Court shall each receive a salary of Seven thousand five hundred dollars per annum.

Publisher's Notes. This section is probably superseded by Ark. Const. Amend. 43.

AMEND. 10. LIMITATION ON LEGISLATIVE AND TAXING POWER (CONST., ART. 12, § 4, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 12, § 4, and is incorporated therein. The amendment was proposed by the General Assembly at the 1923 regular session (see Acts 1923, p. 797) and voted upon at the general elec-

tion on October 7, 1924. Returns: for, 57,854; against, 35,449. The amendment was declared adopted in *Brickhouse v. Hill*, 167 Ark. 513, 268 S.W. 865 (1925).

Effective Dates. Ark. Const. Amend. 10, § 2: effective 60 days after adoption.

AMEND. 11. SCHOOL TAX (CONST., ART. 14, § 3, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 14, § 3, and is incorporated therein. The amendment was proposed by the General Assembly at the 1925 regular session (see Acts 1925, p. 1090), was voted upon at the general election on October 5, 1926, and adopted by a vote of 97,502 for and 40,837 against.

Ark. Const., Art. 14, § 3, as amended by Ark. Const. Amend. 11, was further amended by Ark. Const. Amend. 40 and Ark. Const. Amend. 74. See notes to Ark. Const., Art. 14, § 3.

CASE NOTES

Cited: *Arkansas State Hwy. Comm'n v. Coffelt*, 301 Ark. 112, 782 S.W.2d 45 (1990).

AMEND. 12. TEXTILE MILLS, TAX EXEMPTION.

Cotton mills tax exempt for seven years.

All capital invested in a textile mill in this state for the manufacture of cotton and fiber goods in any manner shall be and is hereby declared to be exempt from taxation for a period of seven years from the date of the location of said textile mill.

Publisher's Notes. This amendment was proposed by the General Assembly at the 1925 regular session (see Acts 1925, p. 1089) and adopted at the general election on Oct. 5, 1926, by a vote of 102,044 for and 31, 661 against.

Effective Dates. Ark. Const. Amend. 12, § 2: effective after approval and adoption by the people of the State of Arkansas.

RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

CASE NOTES

Rayon and Polyester Fibers.

Where expert testimony showed that limited life non woven products produced from rayon and polyester fibers and designed for single usage as disposable dia-

pers or limited usage in hospitals were fiber goods, manufacturer was entitled to tax exemption provided for in this amendment. *Casey v. Scott Paper Co.*, 272 Ark. 312, 613 S.W.2d 821 (1981).

AMEND. 13. [REPEALED.]

Publisher's Notes. This amendment, which amended Ark. Const., Art. 16, § 1, was repealed by Ark. Const. Amend. 62, § 11.

AMEND. 14. LOCAL ACTS.

Local or special acts prohibited — Rights to repeal acts by legislature.

The General Assembly shall not pass any local or special act. This amendment shall not prohibit the repeal of local or special acts.

Publisher's Notes. This amendment was proposed by initiative petition filed in the office of the Secretary of State on May 28, 1926 (see Acts 1927, p. 1215). It was approved at the general election on Oct. 5,

1926, by a vote of 80,500 for and 44,150 against.

This amendment may supersede Ark. Const., Art. 5, §§ 24-26.

RESEARCH REFERENCES

Am. Jur. 16B Am. Jur. 2d, Constitutional Law, § 874.

Ark. L. Rev. Special and Local Acts in Arkansas, 3 Ark. L. Rev. 113.

Changing Boundaries of Municipal Corporations in Arkansas, 20 Ark. L. Rev. 135.

UALR L.J. Kennedy, Initiated Consti-

tutional Amendments in Arkansas: Strolling Through the Mine Field, 9 UALR L.J. 1.

Survey — Banking, 10 UALR L.J. 543.
Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

CASE NOTES

ANALYSIS

In general.

Administration of justice.

Administrative rules and regulations.

Amendment.

Classification.

— Defined.

— Invalid.

— Population.

— Salaries and fees.

— School districts.

— Taxation.

— Rational basis test.

— Valid.

— Civic center.

— Population.

— Salaries and fees.

— School districts.

— Taxation.

Initiative and referendum.

Repeal.

School Finance Act.

In General.

In determining whether a law is public, general, special, or local, the courts will look to its substance and practical operation rather than to its title, form, and phraseology. *State ex rel. Burrow v. Jolly*, 207 Ark. 515, 181 S.W.2d 479 (1944); *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958); *Laman v. Harrill*, 233 Ark. 967, 349 S.W.2d 814 (1961); *Littleton v. Blanton*, 281 Ark. 395, 665 S.W.2d 239 (1984).

Legislation may be classified as general, special, or local, with a law being general when it operates on all counties, cities, and towns alike, while a law is special in a constitutional sense when by force of an inherent limitation it arbitrarily separates some person, place, or thing from those upon which it would operate except for the separation, and a local law is one that applies to any subdivision or division of the state less than the whole. *Laman v. Harrill*, 233 Ark. 967, 349 S.W.2d 814 (1961); *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990).

The constitutional prohibition of local legislation is a restriction on the General

Assembly and not on municipal corporations of the state. *Rooker v. City of Little Rock*, 234 Ark. 372, 352 S.W.2d 172 (1961).

The court may look outside of the act and consider any fact of which judicial notice may be taken to determine if its operation and effect is special, regardless of its form. *Littleton v. Blanton*, 281 Ark. 395, 665 S.W.2d 239 (1984).

This amendment prohibits the general assembly from passing local or special acts. An act is special if by some inherent limitation it arbitrarily separates some person, place, or thing from those upon which, but for such separation, it would operate; a local act is one that applies to any division or subdivision of the state less than the whole. *Board of Trustees v. City of Little Rock*, 295 Ark. 585, 750 S.W.2d 950 (1988).

An act is "special" if by some inherent limitation or classification it arbitrarily separates some person, place, or thing from those upon which, but for such separation, it would operate, and the legislation is "local" if it applies to any division or subdivision of the state less than the whole. *Owen v. Dalton*, 296 Ark. 351, 757 S.W.2d 921 (1988).

Simply because the legislature states that an act is general in application, a court is not bound by that statement; rather, the court will look to the operation and effect of the legislation and, if that operation and effect is necessarily local, then the act is local regardless of its form. If the legislature is to decide whether an act is local or special legislation, then this amendment serves no purpose and it might just as well not have been adopted. *Owen v. Dalton*, 296 Ark. 351, 757 S.W.2d 921 (1988).

That a statute may ultimately affect less than all of the state's territory does not necessarily render it local or special. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), overruled in part, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

In determining whether there is a ratio-

nal reason for applying an act to one county in this state, the court may look outside the act and consider any fact of which judicial notice may be taken to determine if the operation and effect of the law is local, regardless of its form. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

Administration of Justice.

Statutes establishing or abolishing separate courts are not violative of this amendment since they relate to the administration of justice and are neither local nor special. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940); *Stuttgart v. Elms*, 220 Ark. 722, 249 S.W.2d 829 (1952); *Smalley v. City of Fort Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965); *Littleton v. Blanton*, 281 Ark. 395, 665 S.W.2d 239 (1984).

Act setting fees of clerk of court and the official reporter of the Tenth Chancery District did not violate this amendment as the clerk is a vital part of the court organization and the court stenographer is an essential officer. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940).

Act authorizing schedules of fees for justices of the peace in counties having population between 10,275 and 10,290 violates this amendment and cannot be valid as an act indispensable to the administration of justice. *Wilson v. State*, 222 Ark. 452, 261 S.W.2d 257 (1953).

Act which applied to only one of the five circuit judges in the Sixth Judicial Circuit and which was not determined to be essential to the administration of justice clearly violated the intent of this section and was an example of the very sort of legislation that this amendment was designed to prevent. *Beaumont v. Adkisson*, 267 Ark. 511, 593 S.W.2d 11 (1980).

Statutes designed to meet the judicial needs of an area on a nondiscriminatory basis are a part of a judicial system for the entire state and are not local or special within the meaning of this amendment, even though such statutes may apply only to individual counties, judicial districts, or divisions within districts. *Littleton v. Blanton*, 281 Ark. 395, 665 S.W.2d 239 (1984); *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

Even though the enactment of § 14-14-802 requires some counties to incur a

substantial cost to achieve the administration of justice but others need expend no general county funds for this purpose, that section does not violate the uniformity requirement of this amendment since the General Assembly is not relegated solely to a cost-per-capita test; instead, in providing for a judicial system for the entire state, the General Assembly should consider such matters as population, case load, transportation, and other non-discriminatory classifications. *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

Acts 1955, No. 181, which gave all electors in Jefferson County an opportunity to vote on the municipal judge, did not violate this amendment because it related to the administration of justice and because it was motivated by a nondiscriminatory purpose. *Foster v. Jefferson County Bd. of Elec. Comm'rs*, 328 Ark. 223, 944 S.W.2d 93 (1997).

Administrative Rules and Regulations.

Rules promulgated by Game and Fish Commission applying to portions of the state less than the whole were void as violative of constitutional provision prohibiting the passage of local laws, and statute authorizing such regulations was also void. *Arkansas Game & Fish Comm'n v. Clark*, 192 Ark. 840, 96 S.W.2d 699 (1936) (decision under prior law).

Amendment.

Legislature cannot amend a local act. *Benton v. Thompson*, 187 Ark. 208, 58 S.W.2d 924 (1933).

An act which amends a local law converting it into a general law is not a violation of this amendment. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

Classification.

Where the legislature is dealing with the salaries of county officers under the constitutional directive, it is not necessary to classify the counties as to population or in any other manner, but it is necessary that no county be excluded; but this is not to say that some of the counties may not be excluded if exclusion is based on a proper classification. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

Classification among geographical or political subdivisions is permitted if the general assembly could have had a ratio-

nal basis for it, and the fact that the classification includes only one city does not necessarily mean that it is "local" in the constitutional sense. *Board of Trustees v. City of Little Rock*, 295 Ark. 585, 750 S.W.2d 950 (1988).

If the classifications are such that the legislation applies only to political subdivisions of a certain population, the legislation is local if relative population has nothing to do with the subject-matter of the law. *Owen v. Dalton*, 296 Ark. 351, 757 S.W.2d 921 (1988).

—Defined.

An act is special if by some inherent limitation or classification it arbitrarily separates some person, place, or thing from those upon which, but for such separation, it should operate, and the legislation is local if it applies to any division or subdivision of the state less than the whole; just because a statute may ultimately affect less than all the state's territory it does not necessarily render it local or special. *Fayetteville Sch. Dist. No. 1 v. Arkansas State Bd. of Educ.*, 313 Ark. 1, 852 S.W.2d 122 (1993).

—Invalid.

Exemption of counties or districts having stock laws from the provisions of an act violated this amendment. *Jacks v. State*, 219 Ark. 392, 242 S.W.2d 704 (1951).

Act creating office of county clerk for Franklin County under the authority of Ark. Const. Amend. 41, abolishing population requirement, violated this amendment. *Huggins v. Wacaster*, 223 Ark. 390, 266 S.W.2d 58 (1954).

Act providing for minimum wages to be paid on public construction projects according to standards set by the United States Secretary of Labor for corresponding classes of workers on projects of similar character in the area where the work is to be performed is unconstitutional inasmuch as it contains no provisions for establishment of minimum wage rates for those areas in which the Secretary of Labor has made no determination or those areas in which the previous determinations have become obsolete and out-of-date so that it discriminates as to those areas and there is no formula by which such wage rates may be determined, making the act local or special in its effect.

Crowly v. Thornbrough, 226 Ark. 768, 294 S.W.2d 62 (1956).

Act violates the constitutional mandate against local legislation by attempting to set up a work week for firemen in certain city of state based on form of government in city when there was no reasonable relation between the classification and the purpose of the law. *Mankin v. Dean*, 228 Ark. 752, 310 S.W.2d 477 (1958).

The Medical Quota Act which allocated patient-day quotas to a city based on population, and also to the county based on population which included the population of the city, was in violation of this amendment. *Board of Trustees v. Pulaski County*, 229 Ark. 370, 315 S.W.2d 879 (1958).

Act which will affect only one railroad and which was obviously intended to affect only one railroad, which was seeking to and had abandoned its operation, was unconstitutional. *Arkansas Commerce Comm'n v. Arkansas & Ozarks Ry.*, 235 Ark. 89, 357 S.W.2d 295 (1962).

Act creating the Mammoth Spring Municipal Court violated this amendment where the differences between the act and the general legislation which regulates the creation of municipal courts in Arkansas bore no reasonable relation to the need of Mammoth Spring for a municipal court. *Lawson v. City of Mammoth Spring ex rel. Smith*, 287 Ark. 12, 696 S.W.2d 712 (1985).

Former § 14-42-202 [repealed], concerning the election of governing boards of certain cities, violated this amendment and was therefore unconstitutional. *Owen v. Dalton*, 296 Ark. 351, 757 S.W.2d 921 (1988).

—Population.

Statute providing for road overseers in counties which have or may hereafter have a population of not less than 18,300 nor more than 18,350 was violative of this amendment. *State ex rel. Burrow v. Jolly*, 207 Ark. 515, 181 S.W.2d 479 (1944).

Act providing for application to counties of less than 6,000 population by the 1950 census is unconstitutional and void in that it violates this amendment. *Humphrey v. Thompson*, 222 Ark. 884, 263 S.W.2d 716 (1954).

Act providing salary for deputy sheriff in counties having a population of not more than 11,000 and not less than 10,200

according to the 1950 census (Searcy County) was a special act in violation of the amendment. *Hensley v. Holder*, 228 Ark. 401, 307 S.W.2d 794 (1957).

Act purporting to fix the salary of the assessor in Independence County is special and invalid in that it purports to create a classification of counties with a population between 23,400 and 23,600. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

Statute providing for a civil service commission in cities having a population of 20,000 or more located in counties with a population of 100,000 or more was void as constituting local legislation. *Laman v. Harrill*, 233 Ark. 967, 349 S.W.2d 814 (1961).

Amendment which provides a classification for municipal court clerks pertaining to eligibility for retirement is special legislation which is prohibited since the act amended applies only to counties with populations exceeding 150,000 and, thus, only applies to Pulaski County where the defendant was a municipal court clerk and since the classification would apply only to the defendant and qualify her for immediate retirement. *Board of Trustees v. Beard*, 273 Ark. 423, 620 S.W.2d 295 (1981).

Where an act purported to grant all cities with a city manager form of government and population of over 100,000 the power to directly elect their mayor, but only one city actually met those qualifications, the act was special legislation which was unconstitutional under this amendment. *Knoop v. City of Little Rock*, 277 Ark. 13, 638 S.W.2d 670 (1982).

An act declaring that run-offs in elections for mayors of cities of the first class having mayor/council form of government would only apply to cities having a population between 57,000 and 61,000 and was unconstitutional. *Ferguson v. Brick*, 279 Ark. 288, 652 S.W.2d 1 (1983).

Act to allow a city of the first class but of limited financial means and lacking a local attorney an alternative means of creating a municipal court, its population classification applying only to a county of not less than 26,500 nor more than 28,000, could apply to only one county and violated the prohibition of this amendment. *Littleton v. Blanton*, 281 Ark. 395, 665 S.W.2d 239 (1984).

—Salaries and Fees.

Act purporting to relieve county collectors short in their settlement for collection in 1931 for taxes assessed in 1930, where action was already pending in the circuit court and the collector was insolvent, being intended to apply to a single county where such an action was pending, was unconstitutional as violative of this amendment. *State ex rel. Attorney Gen. v. Lee*, 193 Ark. 270, 99 S.W.2d 835 (1936).

Local act with reference to the fees of officers of a particular county was void. *State ex rel. Garland County v. Jones*, 193 Ark. 391, 100 S.W.2d 249 (1937).

Statute providing commission for collection of special improvement district taxes at the same rate as allowed for collection of general taxes and fee for certifying tracts of delinquent property in said district same as fee for certifying tracts delinquent for general taxes, but excluding from its application collectors receiving a salary, was violative of this amendment. *Conway County Bridge Dist. v. Fullerton*, 196 Ark. 413, 117 S.W.2d 1065 (1938).

—School Districts.

An act which applied only to any portion of a school district completely separated from the rest of the district by a reservoir, whose pupils have to travel more than twenty miles through another district to reach the school in their own district, and whose pupils were not on January 1, 1964, attending school in the district where they belong, is an unconstitutional violation of this amendment. *Thomas v. Foust*, 245 Ark. 948, 435 S.W.2d 793 (1969).

Act which provided for the annual remission of a portion of the excess collector fees to school districts in counties having a population of not less than 78,000 and not more than 84,000 effectively applied to only one county which fell within that population range and, therefore, was unconstitutional. *Special School Dist. v. Sebastian County*, 277 Ark. 326, 641 S.W.2d 702 (1982).

Section 6-17-404 is not an unconstitutional local or special law since the statute is rationally related to Arkansas's interest in assisting one or more border school districts to obtain teachers from adjoining states and thereby foster better education for all students *Hall v. Tucker*, 336 Ark. 112, 983 S.W.2d 432 (1999).

—Taxation.

Act authorizing county court of Pulaski

County to apportion annual three mill road tax to cities and towns within the county was unconstitutional as special legislation. *City of Little Rock v. Campbell*, 223 Ark. 746, 268 S.W.2d 386 (1954).

Act which relieves domestic corporations doing business entirely without the State of Arkansas from the payment of any income tax to the state, when read in connection with the General Income Tax Act of 1929, which imposes an income tax upon a domestic corporation doing business both within and without the state on income derived from sources outside Arkansas, is unconstitutional. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

—Rational Basis Test.

Since whether an act is special depends upon whether, by force of an inherent limitation, it arbitrarily separates some person, place, or thing from those upon which but for such separation it would operate, and since a determination of the arbitrary nature of an act is precisely the goal of the rational basis test, such test is applicable to any analysis under this amendment. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983); *Littleton v. Blanton*, 281 Ark. 395, 665 S.W.2d 239 (1984).

Section 23-110-406, governing redemption of horse racing tickets, does not violate this amendment because there is a rational basis for the distinction between the shorter 180 day limitation period established under § 23-110-406 and the longer limitation periods established under other Arkansas statutes. *Mahurin v. Oaklawn Jockey Club*, 299 Ark. 13, 771 S.W.2d 19 (1989).

The court has used the phrases "rational basis test" and "rational relationship test" interchangeably in describing the standard of review under this amendment. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

Section 16-114-206(b), which sets forth the burden of proof for plaintiffs in medical malpractice cases involving informed consent, is constitutional because there is a rational relationship between the burden of proof required and the achievement of a legitimate governmental objective; therefore, summary judgment was properly granted in favor of a physician who submitted an affidavit of an expert con-

cerning proper standard of care where the patient failed to offer an affidavit from his own expert witness. *Eady v. Lansford*, 351 Ark. 249, 92 S.W.3d 57 (2002).

—Valid.

Statute allowing incorporated towns, irrespective of size and population, to become cities of the second class by passing an ordinance to submit such question to the citizens was not contrary to this amendment. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940).

Act appropriating expense money for certain officials for use in public relations work was not invalid as special legislation because it omitted the Governor from the executive department officials covered. *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964).

Act which applies to all cities of a certain classification is not invalid as local or special legislation as it is prospective in nature, since it includes any other city in the future that comes within the classification. *Whittaker v. Carter*, 238 Ark. 1074, 386 S.W.2d 498 (1965).

Statute which is a reasonable classification and relates to administration of justice does not violate this amendment. *Smalley v. City of Fort Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965).

The emergency clause to an act did not violate this prohibition against special and local acts despite its specific reference to Garland County. *Spa Kennel Club, Inc. v. Dunaway*, 241 Ark. 51, 406 S.W.2d 128 (1966).

Act barring actions against those furnishing design or construction for improvements to real property for injury or death from faulty design or construction of such improvements after four years is not a special law in violation of this amendment because limited to those furnishing design or construction for such improvements. *Carter v. Hartenstein*, 248 Ark. 1172, 455 S.W.2d 918 (1970), appeal dismissed, 401 U.S. 901, 91 S. Ct. 868, 27 L. Ed. 2d 800 (1971).

A Sunday closing law which exempts cities or towns adjacent to towns or cities in adjoining states that permit Sunday sales of items whose Sunday sale is prohibited under such act is not local legislation in violation of this amendment as such classification bears a reasonable relationship to the purpose of the act.

Lockwood v. State, 249 Ark. 941, 462 S.W.2d 465 (1971).

Arkansas Health Services Commission's new rule allowing the commission to disregard the overall county occupancy one time in order to approve a 70-bed nursing home facility in a single county where the projected need for the county exceeded the "existing" beds by 250 or more beds was not arbitrary special or local legislation, because it was conceivable that other counties in the state would, in the future, come under the rule's provisions. *Ark. Health Servs. Comm'n v. Reg'l Care Facilities, Inc.*, 351 Ark. 331, 93 S.W.3d 672 (2002).

—Civic Center.

Where the decision to locate a civic center in Pulaski County was rationally related to the purposes of the act, the trial court's finding that the act did not violate this amendment was affirmed. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

—Population.

Act providing for formation of suburban improvement districts in counties which have or may thereafter have cities of 5,000 population was a general and not a special act. *Murphy v. Cook*, 202 Ark. 1069, 155 S.W.2d 330 (1941).

Act providing that, in cities of the first class which have the mayor-council form of government and which now or hereafter have a population of more than 50,000, the city officials shall be elected for four-year terms, with elections to be held in the even-numbered years, does not violate this amendment. *Lovell v. Democratic Cent. Comm.*, 230 Ark. 811, 327 S.W.2d 387 (1959).

—Salaries and Fees.

Statute fixing compensation of county judges who were ex officio road commissioners providing that in three counties the compensation fixed as salary shall also cover the expenses of the office whereas in the other counties the several quorum courts may make appropriation for such expenses was not a local or special act in violation of this amendment. *Lawhorn v. Johnson*, 196 Ark. 991, 120 S.W.2d 720 (1938).

Acts fixing the salary of the treasurer, sheriff, county clerk, and county judge were held to be general and not to offend

against this amendment. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

Act fixing the salaries of the tax collectors in each of 16 counties in the state where that office is separated from the sheriff's office is not a special or local law violating the constitution because it does not apply to all counties in the state but is general, as a classification contained therein is not an arbitrary but a reasonable one. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

Act fixing the assessor's salary was valid in that it not only included all the counties in the state but it also set forth classifications based on population which appeared to be reasonable and certainly not arbitrary in fixing the salaries. *Inman v. Kelley*, 229 Ark. 149, 313 S.W.2d 796 (1958).

—School Districts.

Act which was prospective in nature, where eight or nine school districts in the state fell within its ambit and where the classifications of the act bore a reasonable relationship to the purposes of the act to reduce the transportation costs and the extensive and dangerous travel by school children, was not local in application and did not violate this amendment. *Heber Springs School Dist. v. West Side School Dist.*, 269 Ark. 148, 599 S.W.2d 371 (1980).

Act is not unconstitutional as local or special legislation since the classification bears a reasonable relationship to the purpose of the act to insure a broad-based representation on school boards in school districts with a large daily attendance. *Phillips v. Giddings*, 278 Ark. 368, 646 S.W.2d 1 (1983).

—Taxation.

An ad valorem tax is on property that may be found in the state and it is immaterial that the property may not be moved on any regular route or schedule. There is nothing in the Constitution of the United States or its laws which prevents a state from taxing personal property employed in interstate or foreign commerce like other personal property within its jurisdiction. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), appeal dismissed, cert. denied, 365 U.S. 770, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961).

Tax legislation exempting retirement income of government employees is not

special legislation for it is not arbitrary; the tax exemption acts are not special acts as that term has been defined since it is not enough that the state has separated some class from the operation of a law, but the separation must be arbitrary. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

The exclusions outlined in § 26-74-319 prevent duplicate taxation in those counties that have imposed both the sales and use tax envisioned by prior legislation, and such an exclusion is neither arbitrary nor unreasonable. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), overruled in part, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Initiative and Referendum.

Act fixing salaries of county officers can be initiated and adopted by county electors under Initiative and Referendum Amendment and it would not be in conflict with the general law. *Tindall v. Searan*, 192 Ark. 173, 90 S.W.2d 476 (1936).

Repeal.

Act which repealed special acts requiring railroad company to erect and maintain a viaduct over certain tracks in City of Texarkana was not unconstitutional as violative of this amendment. *Greer v. City of Texarkana*, 201 Ark. 1041, 147 S.W.2d 1004 (1941).

Act amending statute fixing salaries of county judges was held not to repeal initiated act of a certain county by which judge's salary was fixed at a lower figure. *Warfield v. Chotard*, 202 Ark. 837, 153 S.W.2d 168 (1941).

The repeal of only part of a local or special act is permissible. *Goggin v. Ratchford*, 217 Ark. 180, 229 S.W.2d 130 (1950).

School Finance Act.

The School Finance Act of 1984, as amended, is general legislation and not special or local legislation because it bears a reasonable relationship to the purpose of the law. *Fayetteville Sch. Dist. No. 1 v. Arkansas State Bd. of Educ.*, 313 Ark. 1, 852 S.W.2d 122 (1993).

Cited: *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1944); *Meador v. Warrington*, 228 Ark. 297, 307 S.W.2d 75 (1957); *Henry v. Tarpley*, 230 Ark. 722, 324 S.W.2d 503 (1959); *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961); *Vance v. Johnson*, 238 Ark. 1009, 386 S.W.2d 240 (1965); *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979); *Gay v. Rabon*, 280 Ark. 5, 652 S.W.2d 836 (1983); *Taylor v. Patterson*, 283 Ark. 11, 670 S.W.2d 444 (1984); *Pope County v. Streett*, 284 Ark. 416, 682 S.W.2d 749 (1985); *Magruder v. Arkansas Game & Fish Comm'n*, 293 Ark. 39, 732 S.W.2d 849 (1987); *UHS of Ark., Inc. v. City of Sherwood*, 296 Ark. 97, 752 S.W.2d 36 (1988); *State ex rel. Robinson v. Craighead County Bd. of Election Comm'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989); *Paragould Cablevision, Inc. v. City of Paragould*, 305 Ark. 476, 809 S.W.2d 688 (1991); *Morrison v. Jennings*, 328 Ark. 278, 943 S.W.2d 559 (1997); *Caston v. Benton Pub. Sch.*, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 11299 (E.D. Ark. Apr. 11, 2002).

AMEND. 15. SALARIES OF STATE OFFICERS.

Salaries of state officials.

The annual salaries of the State and District Officers hereinafter mentioned, which shall be paid in monthly installments, shall be as follows:

For Governor, the sum of \$6,000.00; for Secretary of State, the sum of \$4,000.00; for Treasurer of the State, the sum of \$4,000.00; for Auditor of the State, the sum of \$4,000.00; for Attorney General, the sum of \$5,000.00; for Judge of the Circuit Courts and Chancellors, each, the sum of \$3,600.00.

The members of the General Assembly shall receive as their salary the sum of One Thousand (\$1,000.00) Dollars, except the Speaker of the House of Representatives, who shall receive his salary of Eleven

Hundred Dollars (\$1,100.00), for each period of two (2) years; and in addition to such salary the members of the general Assembly shall receive five cents per mile for each mile traveled in going to and returning from the seat of government over the most direct and practicable route, and provided further that when said members are required to attend an extraordinary session of the General Assembly they shall receive in addition to the salary herein provided the sum of 6.00 per day for each day they are required to attend, and mileage at the rate herein provided.

Publisher's Notes. This amendment was proposed by the General Assembly at the 1927 regular session (see Acts 1927, p. 1189). It was approved at the general election on Nov. 6, 1928, by a vote of 94,528 for and 56,042 against.

This amendment was held to be superseded by Ark. Const. Amend. 37 in *Berry v. Gordon*, 237 Ark. 547 and 865, 376 S.W.2d 276 (1964). Ark. Const. Amend. 37 was

repealed by Ark. Const. Amend. 56, which now governs salaries of executive officers and General Assembly members.

Effective Dates. Ark. Const. Amend. 15, § 2: effective upon approval and adoption by the people of the State of Arkansas. The 1928 general election at which this amendment was adopted was held on October 6, 1928.

CASE NOTES

Supersession.

The entire subject of this amendment concerning entitlements of executive officers is fully covered and repealed by Ark. Const. Amend. 37 (repealed, now see Ark.

Const. Amend. 56). *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964).

Cited: *State ex rel. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

AMEND. 16. JURY TRIAL (CONST., ART. 2, § 7, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 2, § 7, and is incorporated therein. The amendment was proposed by the General Assembly at

the 1927 regular session (see Acts 1927, p. 1190 and Acts 1929, p. 1521) and adopted at the general election on Nov. 6, 1928, by a vote of 101,890 for and 52,147 against.

AMEND. 17. [REPEALED.]

Publisher's Notes. This amendment was repealed by Ark. Const. Amend. 62, § 11.

AMEND. 18. TAX TO AID INDUSTRIES.

City tax. — It being most apparent that factories, industries and transportation facilities are necessary for the development of a community and for the welfare of its inhabitants, a special tax not exceeding five mills on the dollar of all taxable property in cities of the first class located in counties now or hereafter having not less than one hundred five thousand population, in addition to other taxes now provided by law, may be levied in such cities for the period that may be provided by law, when petitioned for by ten per cent of the owners of real property

in such city and on consent of a majority of the electors of such city voting on the question.

The proceeds of such tax shall be expended by a board of three commissioners, each of whom shall be taxpayer in such city, said commissioners, to serve for such term as may be provided by law without compensation, except actual expenses. One of the commissioners shall be selected by a majority of the judges of the Supreme Court, sitting as a board, one by a majority of the judges of the Circuit, County and Chancery Courts of the county, sitting as a board, and one by a majority of the banks and trust companies located in such city whose representatives shall sit as a board. Where there are two such cities in such county and the tax herein provided for has been voted in each, one board of commissioners may be appointed for both cities if a majority of the boards having the appointive power deem best, and in that event a majority of the banks and trust companies in both cities shall appoint one commissioner, and the proceeds of the tax shall be expended for the benefit of both cities.

The proceeds of such tax may be expended as may be provided by law for the purpose of securing the location of factories, industries, river transportation and facilities therefor within and adjacent to such cities or other public purposes, exclusive of charities and those now within the powers of said cities to perform, and expenditures may also be made for advertising such cities and the State, or making secured loans to such factories and industries, or for any other public purpose that may be provided by law, connected with securing the location of such factories and industries and encouraging them.

The provisions of this amendment are separable, and if any should be held invalid the remainder shall stand.

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 6, 1928, by a vote of 99,507 for and 44,675 against. See Acts 1929, p. 1526.

Cross References. Implementing Act of 1963, § 14-163-201 et seq.

Qualifications of justices and judges, Ark. Const., Amendment 80.

RESEARCH REFERENCES

UALR L.J. Kennedy, Initiated Constitutional Amendments in Arkansas: Stroll-

ing Through the Mine Field, 9 UALR L.J. 1.

CASE NOTES

ANALYSIS

Commissioners.
Continuing levy.
Eminent domain.
Petition for election.
Purposes of levy.

Commissioners.

Section 5 of the implementing act was

unconstitutional to the extent that it attempted to strip the board of commissioners of all the authority vested in them by this amendment, to reduce them to mere puppets having no duties except to receive the tax proceeds from the county treasurer and deposit them in a bank account, and to vest all the powers of the commissioners in the governing body of the city.

McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

Continuing Levy.

The legislature could have authorized the electorate to approve a continuing levy to support a long-term bond issue under this section. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

Eminent Domain.

This amendment does not purport to delegate the power of eminent domain to municipalities for the purpose of acquiring industrial sites or parks. City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967).

Petition for Election.

The petition for the special election must be signed by ten percent in number of the total real property owners within the city. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

Purposes of Levy.

Where the purposes enumerated in the petition for the special election were set

forth in general language specifying street improvements and nothing in the petition required any direct connection between the proposed capital improvements and the new industries, the purposes did not fall within the scope of this amendment. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

The phrase "other public purposes," as used in this section, was not an open-end authorization of unlimited scope. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

Where the purposes set out in a petition for a special election for a tax levy were for the construction of a convention center, improved river transportation facilities, and to provide capital for a nonprofit small business investment company to aid in the financing of industries when private financing was not available, the purposes fell within the scope of this amendment. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

AMEND. 19. PASSAGE OF LAWS (CONST., ART. 5, §§ [37]-[41] ADDED).

Publisher's Notes. This amendment added five sections to Ark. Const., Art. 5 which appear as §§ [37]-[41] of that article. The amendment was proposed by the General Assembly at the 1933 regular

session (see Acts 1933, p. 877), voted upon at the general election on Nov. 6, 1934, and adopted by a vote of 99,223 for and 25,496 against.

CASE NOTES

Cited: ACW, Inc. v. Weiss, 329 Ark. 302, 947 S.W.2d 770 (1997).

AMEND. 20. STATE BONDS.

Bonds prohibited except when approved by majority vote of electors. — Except for the purpose of refunding the existing outstanding indebtedness of the State and for assuming and refunding valid outstanding road improvement district bonds, the State of Arkansas shall issue no bonds or other evidence of indebtedness pledging the faith and credit of the State or any of its revenues for any purpose whatsoever, except by and with the consent of the majority of the qualified electors of the State voting on the question at a general election or at a special election called for that purpose.

Publisher's Notes. This amendment may be superseded by Ark. Const. Amend. 65.

This amendment was proposed by the General Assembly at the 1933 regular session (see Acts 1933, p. 879). It was approved at the general election Nov. 6, 1934, by a vote of 97,344 for and 26,299 against.

This Amendment to the Constitution of Arkansas shall be self-executing and require no enabling act, but shall take and have full force and effect immediately upon its adoption by the electors of the State.

RESEARCH REFERENCES

UALR L.J. Note, Revenue Bonds — The Election Requirement: City of Hot Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

Survey — Miscellaneous, 12 UALR L.J. 219.

CASE NOTES

ANALYSIS

In general.

Initiative and referendum.

Prior obligations.

Refunding bonds.

Revenue bonds.

—Convention center-hotel bonds.

—Housing development agency.

—Justice building commission.

—Reserve fund commission.

—Revenue department building.

—Student loan authority.

—University of Arkansas.

—Water resource development.

School funds.

In General.

This amendment was not violated by act providing for issuance of bonds for highway purposes where consent of majority of electors of state was secured through a special election called for that purpose. *Pickens v. McMath*, 215 Ark. 332, 220 S.W.2d 602 (1949).

Initiative and Referendum.

This amendment does not repeal or supersede the initiative and referendum amendment. *Matthews v. Bailey*, 198 Ark. 830, 131 S.W.2d 425 (1939).

Prior Obligations.

This amendment does not prohibit delivery of bonds sold by state and placed in escrow before the amendment was adopted. *Walton v. Arkansas Constr. Comm'n*, 190 Ark. 775, 80 S.W.2d 927 (1935).

This provision was held not violated by statute providing for issuance of refunding bonds to retire outstanding obligations issued under authority of a statute pledging the credit of the state prior to the effective date of this amendment. *Ward v. Bailey*, 198 Ark. 27, 127 S.W.2d 272 (1939).

Refunding Bonds.

Bonds merely evidence an indebtedness and this amendment does not limit the number of permissible refundings of an indebtedness to those in existence at the time of the adoption of this amendment. *Beaumont v. Faubus*, 239 Ark. 801, 394 S.W.2d 478 (1965).

Revenue Bonds.

The pledging of so-called state or public revenues is not prohibited by this amendment unless the pledge is to the payment of state bonds. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

The provisions of the real property transfer tax authorizing state agencies to pledge portions of the tax collected for the payment of revenue bonds violate this section. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

—Convention Center-Hotel Bonds.

City revenue bonds issued to pay the costs of city's portion of a proposed convention center-hotel complex are special obligations of the city, secured and payable; thus, this amendment, which does not prohibit the pledging of public revenues if the state is not obligated, is not violated.

Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

—Housing Development Agency.

Where the Arkansas Housing Development Agency was issuing bonds solely and exclusively as the Agency's obligations, the purchaser had no legal recourse against the State of Arkansas in the event of default of the bonds and the proposed bonds were not in violation of this amendment. *Murphy v. Epes*, 283 Ark. 517, 678 S.W.2d 352 (1984).

—Justice Building Commission.

Bonds which Arkansas justice building commission is authorized to issue are not state bonds within the meaning of this amendment. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

—Reserve Fund Commission.

Statute does not call for the state to lend its credit where the obligation arising under the act is solely that of the Reserve Fund Commission and the certificates of indebtedness are payable only from the investment of the daily treasury balance. *Miles v. Gordon*, 234 Ark. 525, 353 S.W.2d 157 (1962).

—Revenue Department Building.

Since the statute provides that state revenue department building bonds will not be supported or guaranteed by full faith and credit of the state, and that the bonds can only be paid from certain special funds described therein, it does not violate the constitutional amendment prohibiting issuance of any bonds pledging the full faith and credit of the state except when authorized by a vote of the qualified electors. *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962).

—Student Loan Authority.

Student Loan Authority bonds which will be repaid from income derived from the loan notes and investments, with interest payments coming from the federal government and which clearly state on their face that they do not constitute an indebtedness or obligation of the State of Arkansas, can be issued without the approval of the electorate. *Turner v. Woodruff*, 286 Ark. 66, 689 S.W.2d 527 (1985).

—University of Arkansas.

Only the state is prohibited from issuing bonds and other evidences of indebtedness pledging the faith and credit of the state or any of its revenues except by a majority vote of the electors and the issuance of revenue bonds by the trustees of the University of Arkansas does not violate this amendment. *Jacobs v. Sharp*, 211 Ark. 865, 202 S.W.2d 964 (1947).

—Water Resource Development.

Acts 1985, No. 280, amending certain sections in § 15-22-601 et seq., relating to water resource development, is unconstitutional as it violates this amendment, relating to state bonds. *Reeves v. Young*, 295 Ark. 506, 749 S.W.2d 327 (1988).

School Funds.

Revenues of school districts are not revenues of the state within the meaning of this section. *State ex rel. Holt v. State Bd. of Educ.*, 195 Ark. 222, 112 S.W.2d 18 (1937).

Funds of permanent school fund arising from sales of sixteenth section lands are revenue of the state within this constitutional provision and can not be pledged as security for the payment of bonds. *State ex rel. Holt v. State Bd. of Educ.*, 195 Ark. 222, 112 S.W.2d 18 (1937).

While permanent school fund may be loaned so that interest will accrue, it may not be borrowed upon the credit of the state wherein the resources or revenues of the state may be pledged, directly or indirectly, for the repayment. *Walls v. State Bd. of Educ.*, 195 Ark. 955, 116 S.W.2d 354 (1938).

Statute authorizing state board of education to make loans at four percent from permanent fund to state school equalizing fund and issue certificates of indebtedness was not violative of this amendment, there being no pledge of full faith and credit of the state, nor of any of its revenues. *State Bd. of Educ. v. Aycock*, 198 Ark. 640, 130 S.W.2d 6 (1939).

Cited: *Raney v. Raulston*, 238 Ark. 875, 385 S.W.2d 651 (1965); *Morgan v. Sparks*, 258 Ark. 273, 523 S.W.2d 926 (1975); *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986); *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986).

AMEND. 21. CRIMINAL PROSECUTIONS — SALARIES OF PROSECUTORS.

Publisher's Notes. This amendment was proposed by the General Assembly at the 1935 session (see Acts 1935, p. 995) and adopted by popular vote at the gen-

eral election on Nov. 3, 1936. It was declared adopted by the Speaker of the House of Representatives on Jan. 12, 1937.

§ 1. Prosecution by indictment or information.

All offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment by a grand jury or information filed by the Prosecuting Attorney.

Cross References. Indictment on criminal charge, Ark. Const., Art. 2, § 8.

RESEARCH REFERENCES

Ark. L. Notes. Malone, The Availability of a First Appearance and Preliminary Hearing, 1983 Ark. L. Notes 41.

Ark. L. Rev. Hall, The Prosecutor's Subpoena Power, 33 Ark. L. Rev. 122.

Gingerich, The Arkansas Grand Jury, etc., 40 Ark. L. Rev. 54.

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ANALYSIS

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Constitutionality.

Prosecution by information is not prohibited by the U.S. Constitution. *Deatherage v. State*, 194 Ark. 513, 108 S.W.2d 904 (1937); *Penton v. State*, 194 Ark. 503, 109 S.W.2d 131 (1937); *Cascio v. State*, 213 Ark. 418, 210 S.W.2d 897, cert. denied, 335 U.S. 845, 69 S. Ct. 25, 93 L. Ed. 395 (1948); *Smith v. State*, 218 Ark. 725, 238 S.W.2d 649 (1951); *Payne v.*

State, 226 Ark. 910, 295 S.W.2d 312 (1956), rev'd on other grounds, 356 U.S. 560, 78 S. Ct. 844, 2 L. Ed. 2d 975 (1958). See also *Moore v. State*, 229 Ark. 335, 315 S.W.2d 907 (1958), cert. denied, 358 U.S. 946, 79 S. Ct. 356, 3 L. Ed. 2d 353 (1959); *Monts v. State*, 233 Ark. 816, 349 S.W.2d 350 (1961); *Beckwith v. State*, 238 Ark. 196, 379 S.W.2d 19 (1964); *Stewart v. Stephens*, 244 F. Supp. 982 (E.D. Ark. 1965); *Stewart v. State*, 241 Ark. 4, 406 S.W.2d 313 (1966), cert. denied, 386 U.S. 946, 87 S. Ct. 983, 17 L. Ed. 2d 877 (1967); *Scott v. State*, 241 Ark. 791, 410 S.W.2d 401 (1967); *Petty v. State*, 241 Ark. 911, 411 S.W.2d 6 (1967); *Davis v. State*, 246 Ark. 838, 440 S.W.2d 244 (1969), cert. denied, 403 U.S. 954, 91 S. Ct. 2273, 29 L. Ed. 2d 865 (1971); *Bass v. State*, 248 Ark. 148, 450 S.W.2d 553 (1970); *McDonald v. Arkansas*, 501 F.2d 385 (8th Cir.), cert. denied, 419 U.S. 1004, 95 S. Ct. 325, 42 L. Ed. 2d 280 (1974); *Caldwell v. State*, 295 Ark. 149, 747 S.W.2d 99 (1988).

This amendment was not adopted contrary to state constitutional provision for amending the Constitution since the two sections both relate to prosecuting attorneys and are not two questions in one

amendment. *Brockelhurst v. State*, 195 Ark. 67, 111 S.W.2d 527 (1937).

Trial of defendant under an information instead of under indictment is not a violation of the State Constitution. *Brown v. State*, 213 Ark. 989, 214 S.W.2d 240 (1948); *Ellingburg v. State*, 254 Ark. 199, 492 S.W.2d 904 (1973).

Absent a showing of invalid adoption, a state constitutional amendment is the state constitution with regard to the subject matter it addresses; thus, defendant's claim that this amendment violated the Arkansas Constitution failed where there was no allegation of invalid adoption. *Guinn v. State*, 27 Ark. App. 260, 771 S.W.2d 290 (1989).

In General.

Where appellant was charged with a felony in municipal court by a traffic ticket, without the filing of an information, the charging of the defendant violated this section. *Long v. State*, 284 Ark. 21, 680 S.W.2d 686 (1984).

This section reserves the duty of charging an accused to the prosecutor or the grand jury. *State v. Murphy*, 315 Ark. 68, 864 S.W.2d 842 (1993).

The requirements for informations and indictments are set out in § 16-85-403 and Ark. Const., Art. 7, § 49. *Archer v. Benton County Circuit Court*, 316 Ark. 477, 872 S.W.2d 397 (1994).

Adoption of Amendment.

This section was not void on contention that it was improperly advertised and voted on by the people; having been adopted by the favorable vote of the people, the fact that the Secretary of State may have made an error with reference to the section and article to be amended is of no consequence. *Brockelhurst v. State*, 195 Ark. 67, 111 S.W.2d 527 (1937).

Amendment of Information.

Where defendant was charged with and convicted of rape of his two daughters, the charge filed was a matter of prosecutorial discretion, and neither the trial judge nor the defendant had the authority to amend the information to charge incest instead of rape since that authority rested solely with the prosecutor. *Simpson v. State*, 310 Ark. 493, 837 S.W.2d 475 (1992).

A circuit judge does not have the authority to amend the charge brought by

the prosecuting attorney. *State v. Knight*, 318 Ark. 158, 884 S.W.2d 258 (1994).

Because driving under the influence (DUI) is not a lesser-included offense of driving while intoxicated (DWI), defendant, who was only charged with DWI, was prepared to defend against the charge of DWI and was prejudiced by circuit court's decision altering the charge to DUI. *McElhanon v. State*, 329 Ark. 261, 948 S.W.2d 89 (1997).

Date Charges Filed.

Defendant's right to receive notice of the felony charges against him is protected by Ark. Const., Art. 2, § 8, and this section, which require those criminal charges to be filed by indictment or information; therefore, for purposes of his speedy trial rights and ARCrP 28.2(a), the date charges were filed against defendant was the date the felony information was filed in circuit court, rather than the date the affidavit of probable cause to arrest him was filed. *Archer v. Benton County Circuit Court*, 316 Ark. 477, 872 S.W.2d 397 (1994).

Filing Information.

Under this section, a deputy prosecuting attorney must, if he files information, file it in the name of the prosecuting attorney. *Johnson v. State*, 199 Ark. 196, 133 S.W.2d 15 (1939); *State v. Eason & Fletcher*, 200 Ark. 1112, 143 S.W.2d 22 (1940); *Bingley v. State*, 235 Ark. 982, 363 S.W.2d 530, cert. denied, 375 U.S. 909, 84 S. Ct. 202, 11 L. Ed. 2d 148 (1963).

An information may be filed before preliminary examination of the accused. *Payne v. State*, 226 Ark. 910, 295 S.W.2d 312 (1956), rev'd on other grounds, 356 U.S. 560, 78 S. Ct. 844, 2 L. Ed. 2d 975 (1958).

Where defendant was arrested for grand theft of an automobile, prosecuting attorney was permitted to bypass municipal court in which defendant initially appeared and file an information direct in circuit court. *Lewis v. State*, 258 Ark. 242, 523 S.W.2d 920 (1975).

Where defendant had committed two robberies, had the prosecutor filed two informations instead of joining the offenses, either action clearly within his authority, the first conviction would have been admissible for enhancement purposes irrespective of the fact that the conduct at issue in the first trial occurred

after the conduct at issue in the case at bar. *Walker v. State*, 314 Ark. 628, 864 S.W.2d 230 (1993).

Grand Jury Actions Not Preclusive.

The acts of the grand jury with respect to the findings of an indictment are not binding upon the prosecuting attorney with respect to his filing an information and an information may be filed although the grand jury has investigated the case and refused or failed to find an indictment. *Orsini v. State*, 286 Ark. 283, 691 S.W.2d 175 (1985).

Statute which provides that a charge can be again submitted to a grand jury after a No True Bill only upon direction of the court does not prevent an accusation by information after the grand jury has investigated the charge. *Orsini v. State*, 286 Ark. 283, 691 S.W.2d 175 (1985).

Investigative Powers.

A person served with a subpoena duces tecum issued by a prosecuting attorney has access to the appropriate circuit court and thence to the Supreme Court to test the validity of the writ and to obtain protection against enforcement of a subpoena that calls for the production of irrelevant material or which contains unreasonably broad or unduly burdensome demand for the production of documents. *Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968), *aff'd*, 393 U.S. 14, 89 S. Ct. 47, 21 L. Ed. 2d 14 (1968).

The authority of the prosecuting attorney to subpoena witnesses for investigative purposes is limited to subpoenaing those witnesses to appear at a place in the county where the alleged offenses or matters to be investigated occurred. *State ex rel. Streett v. Stell*, 254 Ark. 656, 495 S.W.2d 846 (1973).

Manslaughter.

A prosecution for manslaughter on information did not violate the State Constitution. *Washington v. State*, 213 Ark. 218, 210 S.W.2d 307, cert. denied, 335 U.S. 884, 69 S. Ct. 232, 93 L. Ed. 423 (1948).

Murder.

A prosecution for first degree murder on information does not violate U.S. Const., Amend. 14. *Boone v. State*, 230 Ark. 821, 327 S.W.2d 87 (1959); *Beckwith v. State*, 238 Ark. 196, 379 S.W.2d 19 (1964).

Preliminary Hearing.

Where information charged county sheriff with permitting escape in the first degree, sheriff was not entitled to a preliminary hearing to determine if probable cause existed since there is no constitutional provision or requirement for such a hearing under this section. *State v. Garrison*, 272 Ark. 470, 615 S.W.2d 371 (1981).

Robbery.

Prosecution for robbery by information rather than upon indictment by grand jury was authorized by this section. *Smith v. State*, 194 Ark. 1041, 110 S.W.2d 24 (1937).

Scope of Authority.

The duty of charging an accused with a felony is reserved either to the grand jury or the prosecutor, and trial judge encroached upon the prosecutor's constitutional duties and breached the separation of powers doctrine where he amended charge from a felony to a misdemeanor over the state's objection. *State v. Brooks*, 301 Ark. 257, 783 S.W.2d 368 (1990).

The trial court's amendment of a felony charge to that of a misdemeanor impermissibly usurped the prosecutor's constitutional duties. *State v. Hill*, 306 Ark. 375, 811 S.W.2d 323 (1991).

Where the trial court initially found defendant to be an habitual offender with two prior felony convictions, but later stated the habitual charges would not be used and dismissed them, and the dismissal of the habitual charges was taken on the trial court's own motion over the state's objection that sentencing defendant as an habitual offender was mandatory, the trial court impermissibly usurped the prosecutor's constitutional duties and violated the separation of powers when it dismissed the habitual charges. *State v. Murphy*, 315 Ark. 68, 864 S.W.2d 842 (1993).

Separation of Powers.

Trial court's dismissal of a count against a criminal defendant violated this provision. *State v. Vasquez-Aerreola*, 327 Ark. 617, 940 S.W.2d 451 (1997).

Signature.

Although a deputy prosecutor had signed the first amended information in the name of the prosecutor, but without the prosecutor's consent, the require-

ments of this section and subject-matter jurisdiction were met where a later amended information was signed by the prosecutor; the State's first amended information did not taint the subsequent amendments properly filed. *Hall v. State*, 326 Ark. 318, 933 S.W.2d 363 (1996).

Special Prosecuting Attorney.

A circuit judge does not have the inherent authority to appoint a special prosecuting attorney without the incumbent being legally removed or legally disqualified to act, unless the incumbent prosecuting attorney is being investigated for, or charged with, illegal activity. *Venhaus v. Brown*, 286 Ark. 229, 691 S.W.2d 141 (1985).

Verified Information.

Neither the Constitution nor the statutes require that an information be under oath. *Bazzell v. State*, 222 Ark. 473, 261 S.W.2d 541 (1953).

Cited: *Moss v. State*, 208 Ark. 137, 185 S.W.2d 92 (1945); *Smith v. State*, 231 Ark. 235, 330 S.W.2d 58 (1959); *England v. State*, 234 Ark. 421, 352 S.W.2d 582 (1962); *Maxwell v. State*, 236 Ark. 694, 370 S.W.2d 113 (1963); *Gill v. State*, 242 Ark. 797, 416 S.W.2d 269 (1967); *Jewell v. Stebbins*, 288 F. Supp. 600 (E.D. Ark. 1968); *Graves v. State*, 256 Ark. 117, 505 S.W.2d 748 (1974); *Martindale v. Honey*, 259 Ark. 416, 533 S.W.2d 198 (1976); *Dyas v. State*, 260 Ark. 303, 539 S.W.2d 251 (1976); *Cook v. State*, 274 Ark. 244, 623 S.W.2d 820 (1981); *Lovell v. State*, 283 Ark. 425, 678 S.W.2d 318 (1984); *Todd v. State*, 283 Ark. 492, 678 S.W.2d 345 (1984); *Brewer v. State*, 286 Ark. 1, 688 S.W.2d 736 (1985); *Fairchild v. Lockhart*, 675 F. Supp. 469 (E.D. Ark. 1987); *Dunlap v. State*, 303 Ark. 222, 795 S.W.2d 920 (1990); *Gomez v. Sargent*, 308 Ark. 263, 821 S.W.2d 480 (1992); *In re Badami*, 309 Ark. 511, 831 S.W.2d 905 (1992).

§ 2. Salaries of prosecuting attorneys.

The General Assembly of Arkansas shall by law determine the amount and method of payment of salaries of prosecuting attorneys.

Publisher's Notes. This section may supersede Ark. Const., Art. 19, § 23, with respect to salaries of prosecuting attorneys.

CASE NOTES

Expense Reimbursement.

Where the legislature has established payment of expenses to prosecuting attorneys by paying a monthly lump sum without itemization, a court has no power to

inquire into the wisdom, amount, necessity or propriety of the legislative decision. *Munson v. Abbott*, 269 Ark. 441, 602 S.W.2d 649 (1980).

AMEND. 22. EXEMPTION OF HOMESTEADS FROM CERTAIN STATE TAXES.

Publisher's Notes. This amendment was adopted by popular vote at the general election on Nov. 3, 1936. It was declared adopted by the Speaker of the House of Representatives on Jan. 12, 1937.

RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.
UALR L.J. Hardin, Conversion of Non-exempt Property to Exempt Property on the Eve of Bankruptcy in Arkansas, 10 UALR L.J. 719.

§ 1. Homesteads of \$1,000.00 assessed valuation exempted from certain taxes.

The homestead of each and every resident of the State, whether or not such resident be married or unmarried, male or female, shall be wholly exempt from all state taxes authorized or referred to in Section 8 of Article 16 of the Constitution of Arkansas in all cases where such homestead does not exceed the assessed valuation of one thousand dollars (\$1,000.00). Where the assessed valuation of such homestead exceeds one thousand dollars (\$1,000.00) this exemption shall apply to the first one thousand dollars (\$1,000.00) of such valuation.

§ 2. Legislature authorized to make further exemptions.

Within a maximum limit of two thousand five hundred dollars (\$2,500.00) and a minimum limit of one thousand dollars (\$1,000.00), the legislature is hereby authorized and empowered from time to time to fix the amount of the exemption hereby provided.

§ 3. Legislature to restore tax funds eliminated hereby, and to pass enabling law.

It is hereby made the duty of the legislature, and the legislature is hereby directed:

(a) Fully and completely to replace or restore any and all funds which will or may be eliminated, diminished or otherwise affected hereby or hereunder; but the legislature shall not, in order to accomplish that purpose, impose or levy any new form of tax.

(b) To enact, without unnecessary delay, all legislation necessary and sufficient to make this amendment in all respects effective and workable.

§ 4. No notes or bonds of state impaired hereby.

Nothing herein shall ever be construed, applied or administered so as to impair any right of any holder of any bond, note or other obligation heretofore issued or assumed by the state and now outstanding; but this amendment shall in every respect be construed, applied and administered so as fully to protect all the legal rights of all such holders.

§ 5. Amendment in effect, when.

After and as soon as, and not before, the legislature shall have fulfilled the requirements of section 3 hereof, this amendment or any legislation enacted in pursuance of section 2, shall be in full force and effect.

AMEND. 23. APPORTIONMENT (CONST., ART. 8 AMENDED).

Publisher's Notes. This amendment rewrote Ark. Const., Art. 8, and is incorporated therein. The amendment was adopted at the general election held on

Nov. 3, 1936, and was declared adopted by Speaker of the House of Representatives on Jan. 12, 1937.

Ark. Const., Art. 8, as amended by this amendment, was subsequently amended by Const., Amend. 45. See notes to Ark. Const., Art. 8.

CASE NOTES

Effect of Const. Amend. 73. Ark. Const. Amend. 73 did not repeal the two-year term provision of Ark. Const., Art. 8, as amended. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

AMEND. 24. PROBATE COURTS — CIRCUIT AND COUNTY CLERKS (CONST., ART. 7, §§ 19, 34, 35, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 7, §§ 19, 34, and 35, and is incorporated in those sections. The amendment was proposed by the General Assembly at the regular session of 1937 (see Acts 1937, p. 1400). It was adopted at the general election on Nov. 8, 1938, by a vote of 66,897 for and 52,632 against.

Ark. Const., Art. 7, §§ 34 and 35, as amended by this Amendment, are repealed by Ark. Const. Amend. 80, § 22, effective July 1, 2001.

Effective Dates. Const., Amend. 24, § 4: the first day of January next following its adoption.

AMEND. 25. [REPEALED.]

Publisher's Notes. This amendment, which amended Ark. Const., Amend. 17, was repealed by Ark. Const., Amend. 62, § 11.

AMEND. 26. WORKERS' COMPENSATION (CONST., ART. 5, § 32, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 5, § 32, and is incorporated therein. The amendment was proposed by initiative petition and was adopted at the general election on Nov. 8, 1938, by a vote of 77,028 for and 45,966 against.

RESEARCH REFERENCES

Ark. L. Rev. Note, Wal-Mart Stores, Inc. v. Baysinger: Retaliatory Discharge in Arkansas Workers' Compensation Cases, 45 Ark. L. Rev. 939.

AMEND. 27. EXEMPTING NEW MANUFACTURING ESTABLISHMENT FROM TAXATION.

Power to exempt — Duration.

The Governor and the Agricultural and Industrial Commission (or the agency created by law to assist in the industrial development of Arkansas) may investigate and contract with the owners of any new manufacturing or processing establishment to be located in the State, or owners making addition or additions to any manufacturing or processing establishment already located in the State, for the exemption from State property taxation of any such new manufacturing or processing establishment, or any addition or additions to any such

existing manufacturing or processing establishment, upon such terms and conditions as the Governor and the said Commission may deem to the best interests of the State; provided, that no exemption from taxes shall be granted under this amendment for a longer period than ten (10) calendar years succeeding the date of any such contract. Any such exemption shall "ipso facto" cease upon violation of the terms and conditions of any contract hereby made.

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 8,

1938, by a vote of 70,989 for and 49,276 against.

RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

CASE NOTES

Cited: Halbert v. Helena-West Helena Indus. Dev. Corp., 226 Ark. 620, 291 S.W.2d 802 (1956).

AMEND. 28. REGULATING PRACTICE OF LAW.

Supreme Court — Rule making power.

The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.

A.C.R.C. Notes. Section 16-22-601 provides:

"(a) A person commits an offense if, with intent to obtain a direct economic benefit for himself or herself, the person:

"(1) Contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

"(2) Advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;

"(3) Advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

"(4) Enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action;

"(5) Enters into any contract, except a contract of insurance, with a third person which purports to grant the exclusive

right to select and retain legal counsel to represent the individual in any legal proceeding; or

"(6) Contacts any person by telephone or in person for the purpose of soliciting business which is legal in nature, as set forth above.

"(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Arkansas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

"(c) Except as provided by subsection (d) of this section, an offense under subsection (a) of this section is a Class A misdemeanor.

"(d) An offense under subsection (a) of this section is a Class D felony if it is shown on the trial of the offense that the defendant has previously been convicted under subsection (a) of this section.

"(e) This section shall not apply to a person who is licensed as an adjuster or

employed as an adjuster by an insurer as authorized by § 23-64-101.”

Publisher's Notes. This amendment was proposed by initiative petition and

approved at the general election on Nov. 8, 1938, by a vote of 74,290 for and 46,932 against.

RESEARCH REFERENCES

Ark. L. Rev. Minimum Standards of Judicial Administration — Arkansas, 5 Ark. L. Rev. 1, 5.

Brill, The Arkansas Supreme Court Committee on Professional Conduct 1969-1979: A Call for Reform, 33 Ark. L. Rev. 571.

Note, Eaton and Benton v. Supreme

Court of Arkansas Committee on Professional Conduct: Restrictions on Legal Advertising, 35 Ark. L. Rev. 549.

UALR L.J. Sallings, Survey of Arkansas Law, 3 UALR L.J. 277.

Wolfram, Lawyer Turf and Lawyer Regulation — The Role of the Inherent-Powers Doctrine, 12 UALR L.J. 1.

CASE NOTES

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In general.

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—Abstract and title companies.

—Banks.

—Income tax.

—Notaries.

—Real estate brokers.

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In General.

The power to regulate and define the practice of law is a prerogative of the judicial department as one of the divisions of government. *Neal v. Wilson*, 316 Ark. 588, 873 S.W.2d 552 (1994).

Dismissal of wrongful death action was proper where personal representatives of the estate filed complaint pro se, which constituted the unauthorized practice of law rendering the complaint a nullity, and where the two-year statute of limitations had expired. *Davenport v. Lee*, 348 Ark. 148, 72 S.W.3d 85 (2002).

Appeal.

In view of rules and procedure relating to disbarment, Supreme Court on appeal should give even greater weight to the finding of a lower court than was held proper in cases ruled prior to the adoption of this amendment. *Hurst v. Bar Rules*

Comm., 202 Ark. 1101, 155 S.W.2d 697 (1941).

Attorney who failed to exercise right of appeal within proper time was not entitled to a review of petition which asserted that the court was without the power and authority to require passage of the bar examination as a condition to the reinstatement of license. *In re Dodrill*, 260 Ark. 223, 538 S.W.2d 549 (1976).

A federal district court lacks subject matter jurisdiction to review a state court's allegedly unconstitutional denial of an attorney's admission to the bar; the state court action is judicial in nature, and final state court judgments may be reviewed only by the U.S. Supreme Court. *Partin v. Arkansas State Bd. of Law Examiners*, 863 F. Supp. 924 (E.D. Ark. 1994), *aff'd*, 56 F.3d 69 (8th Cir. 1995), *cert. denied*, 516 U.S. 917, 116 S. Ct. 308, 133 L. Ed. 2d 212 (1995).

Applicants.

Arkansas cannot constitutionally exclude a bar applicant for membership in an organization advocating forcible overthrow of the government unless the applicant knew of these aims and had a specific intent to help bring them about. *Carfagno v. Harris*, 470 F. Supp. 219 (E.D. Ark. 1979).

A state may inquire into communist party membership of a bar applicant, in view of the lawyer's position of trust and confidence and in view of the lawyer's position of authority; however, a question which asks, "Are you now, or have you at any time been, a member or supporter of

any party, organization, or group that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods?" offends the First Amendment of the Constitution of the United States in that it is overbroad. *Carfagno v. Harris*, 470 F. Supp. 219 (E.D. Ark. 1979).

Executive Power.

The power of the executive branch to grant pardons does not limit the constitutional power of this court to regulate the legal profession. *In re Anderson*, 312 Ark. 447, 851 S.W.2d 408 (1993).

Jurisdiction.

Courts have the inherent power to disbar an attorney to protect the courts and the public as well as to maintain the honor of the profession. *Hurst v. Bar Rules Comm.*, 202 Ark. 1101, 155 S.W.2d 697 (1941).

The judiciary alone has the power to regulate and define the practice of law, but it may approve legislative regulations or definitions. *Feldman v. State Bd. of Law Exmrs.*, 438 F.2d 699 (8th Cir. 1971); *Arkansas Bar Ass'n v. Union Nat'l Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954); *Beach Abstract & Guar. Co. v. Bar Ass'n*, 230 Ark. 494, 326 S.W.2d 900 (1959); *Weems v. Supreme Court Comm. on Professional Conduct*, 257 Ark. 673, 523 S.W.2d 900 (1975); *In re Pitchford*, 265 Ark. 752, 581 S.W.2d 321 (1979), cert. denied, 444 U.S. 863, 100 S. Ct. 131, 62 L. Ed. 2d 85, rehearing denied, 444 U.S. 975, 100 S. Ct. 472, 62 L. Ed. 2d 391 (1979).

Order of chancery court appointing committee to investigate a law firm on charges of contempt and alleged violation of Code of Professional Ethics exceeded jurisdiction of court as exclusive jurisdiction over such matters is vested in Supreme Court committee on professional conduct. *Davis v. Merritt*, 252 Ark. 659, 480 S.W.2d 924 (1972).

In a disbarment proceeding, the trial court clearly had jurisdiction with the authority to conditionally suspend attorney's license for 12 months and to condition his reinstatement only upon the attorney's satisfactorily passing the regular examination for admission to the bar. *In re Dodrill*, 260 Ark. 223, 538 S.W.2d 549 (1976).

This amendment grants the Supreme

Court the exclusive power to regulate the practice of law and the professional conduct of attorneys; thus, the right to decide whether an attorney, who regularly practices before a court, can be appointed to represent an indigent in a criminal case is a judicial question, not a legislative one, and the legislature invaded the province of the judicial branch of government in declaring certain attorneys could not be appointed as counsel in a criminal case. *Ball v. Roberts*, 291 Ark. 84, 722 S.W.2d 829 (1987).

The Arkansas Supreme Court is affirmatively charged with the duty of making and, by implication, of enforcing rules governing the practice of law and the conduct of lawyers. *Sexton v. Arkansas Supreme Court Comm. on Professional Conduct*, 299 Ark. 439, 774 S.W.2d 114 (1989), cert. denied, 494 U.S. 1066, 110 S. Ct. 1782, 108 L. Ed. 2d 784 (1990).

Supreme Court Committee on Professional Conduct did not exceed its proper function, or become a court in its own right, by suspending an attorney's license. *Sexton v. Arkansas Supreme Court Comm. on Professional Conduct*, 299 Ark. 439, 774 S.W.2d 114 (1989), cert. denied, 494 U.S. 1066, 110 S. Ct. 1782, 108 L. Ed. 2d 784 (1990).

Attorneys practicing in the bankruptcy courts in Arkansas are subject to the Uniform Federal Rules of Disciplinary Enforcement, but that fact in no way divests the State Committee on Professional Conduct or the Supreme Court of the authority to discipline lawyers for incompetent practice and abuse of process, and inherent in this authority is the power to admit or disbar lawyers. *Dodrill v. Executive Dir.*, 308 Ark. 301, 824 S.W.2d 383 (1992).

The adequacy of an attorney's fee falls well within the ambit of the practice of law over which the Supreme Court has general supervisory authority. *Price v. State*, 313 Ark. 98A, 856 S.W.2d 10 (1993).

The Arkansas Supreme Court derives its power through this section to establish and maintain, through its committee on professional conduct, jurisdiction over a lawyer's person by virtue of the issuance of his license to practice law. *McCullough v. Neal*, 314 Ark. 372, 862 S.W.2d 279 (1993); *Mays v. Neal*, 327 Ark. 302, 938 S.W.2d 830 (1997).

Legislative Power.

Statute permitting trial court to sus-

pend attorney on being handed record of conviction of an indictable offense by attorney has been superseded by Supreme Court rules authorized by this amendment. *Armitage v. Bar Rules Comm.*, 223 Ark. 465, 266 S.W.2d 818 (1954).

Legislative acts with regard to regulating the practice of law are to be considered to be in aid of the judicial prerogative and not in derogation thereof. *Weems v. Supreme Court Comm. on Professional Conduct*, 257 Ark. 673, 523 S.W.2d 900 (1975).

Section 16-22-310 does not usurp the Supreme Court's authority to regulate the practice of law as the statute enunciates the parameters for litigation by clients against attorneys and does not conflict with any rule or decision by the Supreme Court. *Clark v. Ridgeway*, 323 Ark. 378, 914 S.W.2d 745 (1996).

License Fees.

This amendment has nothing to do with privilege tax which may be required of lawyer by ordinance. *Lister v. City of Fort Smith*, 199 Ark. 492, 134 S.W.2d 535 (1939).

Supreme Court had authority to make and enforce an order increasing the license fees of attorneys from \$2 to \$17 per year to support office of executive secretary to the committee on professional conduct. *In re Supreme Court License Fees*, 251 Ark. 800, 483 S.W.2d 174 (1972).

Nonresident Attorneys.

Section was not violated by statute giving nonresident attorneys the right to practice in this state where Tennessee attorney acted as associate counsel to resident attorneys in particular medical malpractice case. *McKenzie v. Burris*, 255 Ark. 330, 500 S.W.2d 357 (1973).

Practice of Law.

—Abstract and Title Companies.

Where abstract and title insurance companies draft and prepare for others instruments involving real property rights and do title examination and curative work for others, they are engaging in the unauthorized practice of law. *Beach Abstract & Guar. Co. v. Bar Ass'n*, 230 Ark. 494, 326 S.W.2d 900 (1959).

—Banks.

A banking corporation, through its employee attorneys, is engaged in the unauthorized practice of law when they draft

fiduciary instruments, prepare and file court papers, appear in court in pending litigation or to invoke processes for its beneficiaries, cofiduciaries, or others than the corporation, or advise persons other than the corporation as to legal matters. *Arkansas Bar Ass'n v. Union Nat'l Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954).

A banking corporation, through its employee attorneys, is not engaged in the unauthorized practice of law when it compiles and drafts inventories and accounts in probate. *Arkansas Bar Ass'n v. Union Nat'l Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954).

A banking corporation may represent itself in the courts through employee attorneys in its own business affairs. *Arkansas Bar Ass'n v. Union Nat'l Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954).

—Income Tax.

A person does not have to be a lawyer to fill out income tax forms. *Creekmore v. Izard*, 236 Ark. 558, 367 S.W.2d 419 (1963).

—Notaries.

A notary public is engaging in unauthorized practice of law when he fills out any simple standardized form used in real estate transactions as there is no connection between his business and that of preparing such instruments; he is confined to the taking of acknowledgments. *Creekmore v. Izard*, 236 Ark. 558, 367 S.W.2d 419 (1963).

—Real Estate Brokers.

A real estate broker, when the person for whom he is acting has declined to employ a lawyer to prepare the necessary instruments and has authorized the real estate broker to do so, may be permitted to fill in the blanks in simple printed standardized real estate forms, which forms must be approved by a lawyer; it being understood that these forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker's business and that such forms shall be used only in connection with real estate transactions actually handled by such brokers as a broker and then without charge for the simple service of filling in the blanks. *Creekmore v. Izard*, 236 Ark. 558, 367 S.W.2d 419 (1963).

Procedures.

Proceedings for disbarment are not criminal but civil in their nature and, as such, are governed by the rules applicable to all civil actions; hence, it is required that the material allegations in such cases be established only by a preponderance of the evidence and not beyond a reasonable doubt. *Hurst v. Bar Rules Comm.*, 202 Ark. 1101, 155 S.W.2d 697 (1941); *In re Dodrill*, 260 Ark. 223, 538 S.W.2d 549 (1976).

There is no fixed formula for computing remuneration for attorneys, and the Supreme Court will defer to the superior perspective of the trial judge based on an intimate familiarity with the proceedings and with the quality of services rendered; the discretion of the trial judge is not to be

disturbed on appeal in the absence of abuse. *Price v. State*, 313 Ark. 98A, 856 S.W.2d 10 (1993).

Cited: *In re Integration of Bar*, 222 Ark. 35, 259 S.W.2d 144 (1953); *Brown v. Wood*, 257 Ark. 252, 516 S.W.2d 98 (1974), cert. denied, 421 U.S. 963, 95 S. Ct. 1951, 44 L. Ed. 2d 449 (1975); *Taylor v. Safly*, 276 Ark. 541, 637 S.W.2d 578 (1982); *In re Amendments to Code of Professional Responsibility & Canons of Judicial Ethics*, 276 Ark. 600, 637 S.W.2d 589 (1982); *Myers v. Muuss*, 281 Ark. 188, 662 S.W.2d 805 (1984); *Commission on Judicial Discipline & Disability v. Digby*, 303 Ark. 24, 792 S.W.2d 594 (1990); *Finch v. Neal*, 316 Ark. 530, 873 S.W.2d 519 (1994); *Wilson v. Neal*, 332 Ark. 148, 964 S.W.2d 199 (1998).

AMEND. 29. FILLING VACANCIES IN OFFICE.

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 8,

1938, by a vote of 63,414 for and 56,947 against.

RESEARCH REFERENCES

UALR L.J. *Survey of Arkansas Law*, Miscellaneous, 6 UALR L.J. 187.

CASE NOTES

Cited: *Whitfield v. Democratic Party*, 890 F.2d 1423 (8th Cir. 1989); *Pederson v.*

Stracener, — Ark. —, — S.W.3d —, 2003 Ark. LEXIS 594 (Nov. 13, 2003).

§ 1. Elective offices — Exceptions.

Vacancies in the office of United States Senator, and in all elective state, district, circuit, county, and township offices except those of Lieutenant Governor, Member of the General Assembly and Representative in the Congress of the United States, shall be filled by appointment by the Governor.

Publisher's Notes. This section may supersede Ark. Const., Art. 7, § 50, with respect to judicial officers other than municipal court officers, but has been held not to supersede that section with respect to municipal courts. See *Johnson County Bd. of Election Comm'rs v. Holman*, 280 Ark. 128, 655 S.W.2d 408 (1983).

Cross References. Filling vacancies in state elective office, Ark. Const., Art. 6, § 22.

General Assembly, writs of election, Ark. Const., Art. 5, § 6.

CASE NOTES

ANALYSIS

In general.
 Construction.
 Purpose.
 Applicability.
 Municipal courts.
 Resignation of governor.
 School districts.
 Special elections.
 Temporary vacancy.
 Vacancies in office.
 Violation of appointive powers.

In General.

When this amendment directs that certain enumerated vacancies shall be filled by the Governor, it means that when an office holder in present possession of an office and legally authorized to discharge the duties of that office dies, resigns, is removed, or abandons the office, a vacancy is created. *Justice v. Campbell*, 241 Ark. 802, 410 S.W.2d 601 (1967).

Construction.

This section did not repeal, with respect to municipal courts, Ark. Const., Art. 7, § 50, relating to the filling of vacancies in offices authorized by Article 7, which created the judicial department of the state government. *Johnson County Bd. of Election Comm'rs v. Holman*, 280 Ark. 128, 655 S.W.2d 408 (1983).

Purpose.

The purpose of this amendment was not to create new appointive power in the Governor, but to reaffirm the existing law for the operation of the other provisions of the amendment. *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959).

This amendment is an express condemnation by the people as to the practice of the Governor to appoint members to the General Assembly. *Matthews v. Bailey*, 198 Ark. 830, 131 S.W.2d 425 (1939). See *Smith v. Ridgeview Baptist Church, Inc.*, 257 Ark. 139, 514 S.W.2d 717 (1974).

Applicability.

This section was intended to apply in cases where there was in fact a permanent vacancy in the office and not in those cases where the incumbent was temporarily absent, disqualified, or incapacitated. *State v. Green & Rock*, 206 Ark. 361, 175 S.W.2d 575 (1943).

Municipal Courts.

Municipal courts are not covered by this amendment, which refers specifically and only to elective state, district, circuit, county, and township offices. *Johnson County Bd. of Election Comm'rs v. Holman*, 280 Ark. 128, 655 S.W.2d 408 (1983).

Resignation of Governor.

This amendment does not require the Lieutenant Governor to appoint a new governor upon the Governor's resignation since Const., Amend. 6 specifically provides for filling a vacancy in the Office of Governor. *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992).

School Districts.

The term "district", as used in this amendment, does not include school directors. *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959).

The vesting of the appointive power to fill the vacancy of school director in the county board of education rather than in the governor does not violate this amendment. *Glover v. Henry*, 231 Ark. 111, 328 S.W.2d 382 (1959).

Special Elections.

Constitution Amendment 55, when read in conjunction with this section, is complete and self-executing as to the manner of filling vacancies in county offices; accordingly, statute which allows quorum courts to call special elections to fill county judge vacancies is unconstitutional. *McCraw v. Pate*, 254 Ark. 357, 494 S.W.2d 94 (1973); *Hawkins v. Stover*, 274 Ark. 125, 622 S.W.2d 667 (1981).

Temporary Vacancy.

Circuit judge who entered the Armed Forces did not thereby abandon his office and vacancy in office did not exist. *State v. Green & Rock*, 206 Ark. 361, 175 S.W.2d 575 (1943).

Vacancies in Office.

The words "vacancies in the office," as used in this amendment, refer to offices which on account of death, resignation, removal, or abandonment of the previous holder thereof, or for some other cause, have in fact no incumbent. *State v. Green & Rock*, 206 Ark. 361, 175 S.W.2d 575 (1943).

Violation of Appointive Powers.

The appointment of a senator by the governor in 1939 to fill a vacancy in the state senate was without apparent authority, contrary to this amendment, and without de facto basis. *Smith v. Ridgeview Baptist Church, Inc.*, 257 Ark. 139, 514 S.W.2d 717 (1974).

Cited: *Wright v. Sullivan*, 229 Ark. 378, 314 S.W.2d 700 (1958); *Files v. Hill*, 268 Ark. 106, 594 S.W.2d 836 (1980); *Pulaski County Mun. Court v. Scott*, 272 Ark. 115, 612 S.W.2d 297 (1981); *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

§ 2. Ineligible persons — Nepotism.

The Governor, Lieutenant Governor and Acting Governor shall be ineligible for appointment to fill any vacancies occurring or any office or position created, and resignation shall not remove such ineligibility. Husbands and wives of such officers, and relatives of such officers, or of their husbands and wives within the fourth degree of consanguinity or affinity, shall likewise be ineligible. No person appointed under Section 1 shall be eligible for appointment or election to succeed himself.

CASE NOTES**Judicial Circuits.**

In two consolidated cases, a candidate appointed to a newly-created vacancy in a division of a judicial circuit was not attempting to succeed himself in violation of Ark. Const., Amend. 29, § 2, when he later ran for election as circuit judge in a

different division of the same judicial circuit because a change in division within a circuit constituted a separate elective office; he would not be succeeding himself as another would occupy his former position. *Brewer v. Fergus*, 348 Ark. 577, 79 S.W.3d 831 (2002).

§ 3. Violation of amendment — Compensation withheld.

No person holding office contrary to this amendment shall be paid any compensation for his services. Any warrant, voucher or evidence of indebtedness issued in payment for such services shall be void.

§ 4. Duration of term of appointee — Election to fill vacancy.

The appointee shall serve during the entire unexpired term in the office in which the vacancy occurs if such office would in regular course be filled at the next General Election if no vacancy had occurred. If such office would not in regular course be filled at such next general election the vacancy shall be filled as follows: At the next General Election, if the vacancy occurs four months or more prior thereto, and at the second General Election after the vacancy occurs if the vacancy occurs less than four months before the next General Election after it occurs. The person so elected shall take office on the 1st day of January following his election.

CASE NOTES**Special Elections.**

The person appointed by the Governor to serve out the preceding term when the

incumbent resigned would serve until a successor could be elected at the next general election since the statute provid-

ing for special elections conflicted with this section and was unconstitutional. *McCraw v. Pate*, 254 Ark. 357, 494 S.W.2d 94 (1973); *Hawkins v. Stover*, 274 Ark. 125, 622 S.W.2d 667 (1981).

§ 5. Election to fill — Placing names on ballots.

Only the names of candidates for office nominated by an organized political party at a convention of delegates, or by a majority of all the votes cast for candidates for the office in a primary election, or by petition of electors as provided by law, shall be placed on the ballots in any election.

CASE NOTES

ANALYSIS

Constitutionality.
In general.
Purpose.

Constitutionality.

Neither this section nor § 7-7-202, which establish and implement the majority vote primary run-off requirement, violate the Fourteenth or Fifteenth amendments of the United States Constitution or the federal Voting Rights Act. *Whitfield v. Democratic Party*, 686 F. Supp. 1365 (E.D. Ark. 1988), modified on other grounds, 890 F.2d 1423 (8th Cir. 1989), *aff'd on reh'g*, 902 F.2d 15 (8th Cir. 1990), cert. denied, 498 U.S. 1126, 111 S. Ct. 1089, 112 L. Ed. 2d 1193 (1991).

In General.

Legislature is free to allow convention, primary, or petition by electors under this

amendment and no political party is guaranteed a vested right in any one of the methods as a means of nominating its candidates. *Newton County Republicans Cent. Comm. v. Clark*, 228 Ark. 965, 311 S.W.2d 774 (1958).

Purpose.

This section and its implementing statutes were not enacted nor maintained for racially invidious purposes. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), appeal dismissed, 498 U.S. 1129, 111 S. Ct. 1096, 112 L. Ed. 2d 1200 (1991).

The majority-vote requirement in Arkansas was not originally enacted to prevent black political success. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), appeal dismissed, 498 U.S. 1129, 111 S. Ct. 1096, 112 L. Ed. 2d 1200 (1991).

AMEND. 30. CITY LIBRARIES.

Publisher's Notes. This amendment adopted at the general election on Nov. 5, 1940. was proposed by initiative petition and

§ 1. Petition for tax levy — Election.

Whenever 100 or more taxpaying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for the purpose of maintaining and operating a public city library and shall specify a rate of taxation not to exceed five mills on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

For a _____ mill tax on real and personal property to be used for maintenance and operation of a public city library.

Against a _____ mill tax on real and personal property to be used for maintenance and operation of a public city library. [As amended by Const. Amend. 72, § 1.]

Publisher's Notes. Prior to amendment by Ark. Const. Amend. 72, § 1, this section read: "Whenever 100 or more tax-paying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for the purpose of maintaining a public city library and shall specify a rate of taxation not exceeding one mill on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general city election. Such petition must be filed at least thirty days prior to the election at

which it will be submitted to the voters. The ballot shall be in substantially the following form:

"For a _____ mill tax on real and personal property to be used for maintenance of a public city library.

"Against a _____ mill tax on real and personal property to be used for maintenance of a public city library."

Cross References. Local police and fire pension and relief funds, § 24-11-101 et seq.

Local police and fire retirement system, § 24-10-101 et seq.

CASE NOTES

Broadening Beneficiary Lists.

Cities cannot by municipal ordinance broaden the list of beneficiaries as provided by statute under the Firemen's Re-

lief Pension Fund Act. *McLaughlin v. Retherford*, 207 Ark. 1094, 184 S.W.2d 461 (1944).

§ 2. Result of election — Certification and proclamation — Tax levy.

The Election Commissioners shall certify to the Mayor the result of the vote, and if a majority of the qualified electors voting on the question at such election vote in favor of the specified tax, then it shall thereafter be continually levied and collected as other general taxes of such city are levied and collected. The result of the election shall be proclaimed by the Mayor. The result so proclaimed shall be conclusive unless attacked in the courts within thirty days. The proceeds of any tax voted for the maintenance of a city public library shall be segregated by the city officials and used only for that purpose.

§ 3. Raising, reducing or abolishing tax — Petition and election.

Whenever 100 or more taxpaying electors of any city having a library tax in force shall file a petition with the Mayor asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and proclaimed, as provided in Section 2 hereof, and the result as pro-

claimed shall be conclusive unless attacked in the courts within thirty days. Subject to the limitations of Section 5(e) hereof, the tax shall be lowered, raised or abolished, as the case may be, according to the majority of the qualified electors voting on the question of such election. If lowered or raised, the revised tax shall thereafter be continually levied and collected and the proceeds used in the manner and for the purposes as provided in Section 2 hereof. [As amended by Const. Amend. 72, § 2.]

Publisher's Notes. Prior to amendment by Ark. Const. Amend. 72, § 2, this section read: "Whenever 100 or more tax-paying electors of any city having a library tax in force shall file a petition with the Mayor asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general city election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and

proclaimed, as provided in Section 2 hereof, and the result as proclaimed shall be conclusive unless attacked in the courts within thirty days. The tax shall be lowered, raised or abolished, as the case may be, according to the majority of the qualified electors voting on the question of such election; provided, however, that it shall not be raised to more than one mill on the dollar. If lowered or raised, the revised tax shall thereafter be continually levied and collected and the proceeds used in the manner and for the purposes as provided for in Section 2 hereof."

§ 4. Co-ordination of city with county library.

Nothing herein shall be construed as preventing a co-ordination of the services of a city public library and a county public library.

§ 5. Petition for tax levy — Election.

(a) Whenever 100 or more taxpaying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for capital improvements to or construction of a public city library and shall specify a rate of taxation not to exceed three mills on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

For a _____ mill tax on real and personal property to be used for capital improvements to or construction of a public city library.

Against a _____ mill tax on real and personal property to be used for capital improvements to or construction of a public city library.

(b) The electors may authorize the governing body of the city to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized by this section for the purpose of retiring the bonds. The interest rate on any bonds shall not exceed the rate provided by this Constitution. The ballot submitting the question to the voters shall be in substantially the following form:

For a _____ mill tax on real and personal property within the city, to be pledged to an issue or issues of bonds not to exceed \$_____, in aggregate principal amount, to finance capital improvements to or construction of the city library and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the city.

Against a _____ mill tax on real and personal property within the city, to be pledged to an issue or issues of bonds not to exceed \$_____, in aggregate principal amount, to finance capital improvements to or construction of the city library and to authorize the issuance of the bonds on such terms and conditions as they shall be approved by the city.

(c) The maximum rate of any special tax to pay bonded indebtedness, as authorized by paragraph (b) hereof shall be stated on the ballot.

(d) The special tax for payment of bonded indebtedness authorized in paragraph (b) hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections, which may have accumulated shall be transferred to the general funds of the city, and shall be used for maintenance and operation of the public city library.

(e) Notwithstanding any other provision of this amendment, a tax approved by the voters for the purpose of paying the bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of, premium or interest on, and the reasonable fees of a trustee or paying agent, so long as the bonded indebtedness shall remain outstanding and unpaid. [Added by Const. Amend. 72, § 3.]

AMEND. 31. POLICE AND FIREFIGHTERS' RETIREMENT SALARIES AND PENSIONS.

§ 1. Election on question — Tax levy.

After consent of the majority of those voting on the question at any general or special election in cities of the first or second class, the cities may annually thereafter, levy a tax on the assessed value of real and personal property, not to exceed two mills on the dollar, from which there shall be created a Fund to pay Retirement Salaries and pensions to policemen and firemen theretofore or thereafter earned, and pensions to the widows and minor children of such, as may be provided by law. The annual levy for the Policeman's Retirement Salary and

Pension Fund shall not exceed one mill on the dollar, and the annual levy for the Fireman's Retirement Salary and Pension Funds, shall not exceed one mill on the dollar. The manner of such levy of the tax, and the eligibility for the retirement salaries and pensions, the several amounts thereof and when payable, shall be such as may be provided by law.

Publisher's Notes. This amendment adopted at the general election Nov. 5, 1940.
was proposed by initiative petition and

CASE NOTES

Cited: Wright v. Storey, 298 Ark. 508,
769 S.W.2d 16 (1989).

AMEND. 32. COUNTY OR CITY HOSPITALS.

Publisher's Notes. This amendment 1342). It was approved at the general
was proposed by the General Assembly election on Nov. 3, 1942, by a vote of
and filed in the office of the Secretary of 40,292 for and 38,682 against.
State on March 27, 1941 (see Acts 1941, p.

§ 1. Petition for tax levy — Election.

Whenever in any county where there is located a public hospital owned by such county or by any municipal corporation therein, whether such hospital be operated by such county or municipal corporation or by a benevolent association as the agent or lessee of such county or municipal corporation, one hundred or more electors of such county shall file a petition with the county judge asking that an annual tax on real and personal property in such county be levied for the purpose of maintaining, operating and supporting such hospital and shall specify a rate of taxation not exceeding one mill on the dollar of the assessed value of real and personal property in the county. The question as to whether such tax shall be levied shall be submitted to the qualified electors of such county at a general election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The county judge upon the filing of such petition shall notify the county board of election commissioners thereof and the county board of election commissioners shall cause the question to be placed upon the ballots in substantially the following form:

For a _____ mill tax on real and personal property to be used for maintenance, operation and support of a public hospital.

Against a _____ mill tax on real and personal property to be used for maintenance, operation and support of a public hospital.

CASE NOTES

Maintenance Tax. Lowery, 221 Ark. 571, 254 S.W.2d 680
A maintenance tax can be included in (1953).
proposal to acquire a hospital. Garner v.

§ 2. Result of election — Certification and proclamation — Tax levy.

The election commissioners shall certify to the county judge the result of the vote and if a majority of the qualified electors voting on the question at such election vote in favor of the specified tax then it shall thereafter be continually levied and collected as other general taxes of such county are levied and collected. The result of the election shall be proclaimed by the county judge by publication for one insertion in some newspaper published and having a bona fide circulation in such county. The result so proclaimed shall be conclusive unless attacked in the courts within thirty days and after the election it shall not be competent to attack the result thereof on the ground that any signers of the petition were not qualified electors. The proceeds of any tax so voted shall upon the settlement of the collecting officer be paid by the treasurer of the county to the treasurer of such hospital to be used by such treasurer in the maintenance, operation and support of such institution; provided that any county where there may be more than one hospital qualified to receive the proceeds of such tax, the quorum court at its meeting for the purpose of adopting the county's budget, shall provide for the apportionment of the proceeds of said tax between the institutions so qualified according to their respective needs.

§ 3. Raising, reducing or abolishing tax — Petition and election.

Whenever one hundred or more electors of any county having a hospital tax in force shall file a petition with the county judge asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballots shall follow, as far as practicable, the form set out in Section 1 hereof, and the result shall be certified and proclaimed as provided in Section 2 hereof and shall be conclusive in like manner. The tax shall be lowered, raised or abolished as the case may be, according to the majority of qualified electors voting on the question at such election, provided, however, that it shall not be raised to more than one mill on the dollar. If lowered or raised the revised tax shall thereafter be continually levied and collected and the proceeds used in the manner and for the purposes provided in Section 2 hereof.

§ 4. Amendment self executing.

This amendment shall be self executing and shall become a part of the constitution of the State of Arkansas when approved by a majority of the electors voting thereon at the next general election.

AMEND. 33. BOARDS AND COMMISSIONS GOVERNING STATE INSTITUTIONS.

Publisher's Notes. This amendment was proposed by initiated petition and adopted at the general election on Nov. 3, 1942, by a vote of 39,756 for and 38,167 against.

Cross References. Honorary boards and commissions, § 25-17-201 et seq.

State board and commission members, § 25-16-801 et seq.

Effective Dates. Ark. Const. Amend. 33, § 6: Jan. 15, 1943.

§ 1. Term of office of members.

The term of office of members of the boards or commissions charged with the management or control of all charitable, penal or correctional institutions and institutions of higher learning of the State of Arkansas, now in existence or hereafter created, shall be five years when the membership is five in number, seven years when the membership is seven in number, and ten years when the membership is ten in number. Such terms of office shall be arranged by the General Assembly to provide a membership with one term of office expiring every year from the effective date of this amendment. The unexpired terms of members serving on the effective date of this amendment shall not be decreased.

§ 2. Abolition or transfer of powers of board or commission — Restrictions.

The board or commission of any institution, governed by this amendment, shall not be abolished nor shall the powers vested in any such board or commission be transferred, unless the institution is abolished or consolidated with some other State institution. In the event of abolition or consolidation, the new board or commission shall consist of a membership of five, seven, or ten.

§ 3. Increase or decrease of members of board or commission prohibited.

The membership of any such board or commission now in existence shall not be increased or decreased in number after the effective date of this amendment nor shall the number of members of any such board or commission created after this amendment is in operation be increased or decreased subsequent to its creation.

§ 4. Removal of member — Procedure — Appeal.

The Governor shall have the power to remove any member of such boards or commissions before the expiration of his term for cause only, after notice and hearing. Such removal shall become effective only when approved in writing by a majority of the total number of the board or commission, but without the right to vote by the member removed or by his successor, which action shall be filed with the Secretary of State together with a complete record of the proceedings at the hearing.

An appeal may be taken to the Pulaski Circuit Court by the Governor or the member ordered removed, and the same shall be tried de novo on the record. An appeal may be taken from the circuit court to the Arkansas Supreme Court, which shall likewise be tried de novo.

§ 5. Vacancy — Filling.

Any vacancy arising in the membership of such board or commission for any reason other than the expiration of the regular term for which the member was appointed shall be filled by appointment by the Governor, subject to approval by a majority of the remaining members of the board or commission, and to be thereafter effective until the expiration of such regular term.

CASE NOTES

Delegation of Authority.
Empowering the Governor to appoint special commissioners without senate approval, is a valid delegation of authority by the legislature to the branch of govern-

ment that is equipped to execute and implement legislative mandates, therefore, § 23-2-102(a) passes constitutional muster. *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

AMEND. 34. RIGHTS OF LABOR.

Publisher's Notes. This amendment was proposed by initiated petition and approved at the general election on Nov. 7,

1944, by a vote of 105,300 for and 87,652 against. See Acts 1945, p. 770.

§ 1. Discrimination for or against union labor prohibited.

No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.

RESEARCH REFERENCES

UALR L.J. Galchus, Survey of Labor Law, 3 UALR L.J. 251.

CASE NOTES

ANALYSIS	Negotiation. Picketing.
In general. Closed shop. Hiring halls. Jurisdiction of chancery court. Municipal employees.	In General. The use of the word "affiliate" is not used in the same sense as the word "join," otherwise, the General Assembly would

not have used the two words in the same sentence. *Kaiser v. Price-Fewell, Inc.*, 235 Ark. 295, 359 S.W.2d 449 (1962), cert. denied, 371 U.S. 955, 83 S. Ct. 511, 9 L. Ed. 2d 501 (1963).

Closed Shop.

Where miners strike for a closed shop, and thereafter an agreement is entered into between miners and operators providing for a closed shop and for the establishment of a pension fund, no suit could be maintained on agreement to recover amounts due pension fund from defendant operators as closed shop agreements are illegal under the Constitution, and since closed shop feature was an essential part of the agreement, the entire contract was void and unenforceable. *Lewis v. Jackson & Squire*, 86 F. Supp. 354 (W.D. Ark. 1949), appeal dismissed, 181 F.2d 1011 (8th Cir. 1950).

A provision in a collective bargaining agreement that a union would furnish the employer with such workers as necessary to complete work contracted for by the employer was not a provision for a closed shop and was not illegal. *Ketcher v. Sheet Metal Workers' Int'l Ass'n*, 115 F. Supp. 802 (E.D. Ark. 1953).

Where picketing is for the purpose of forcing an employer to agree to a closed shop provision, which is in violation of state law, the National Labor Relations Act does not apply. *International Ass'n of Machinists v. Goff-McNair Motor Co.*, 223 Ark. 30, 264 S.W.2d 48 (1954).

Record justified chancellor's decision that labor union established picket line to force employment of only union men contrary to the provisions of this amendment. *Burgess v. Daniel Plumbing & Gas Co.*, 225 Ark. 792, 285 S.W.2d 517 (1956).

Statute making any person who is a member of a union ineligible to serve on the police department was unconstitutional in violation of this amendment. *Potts v. Hay*, 229 Ark. 830, 318 S.W.2d 826 (1958).

Where requirement contained in wage agreement that as a condition of employment all employees should be or become members of the union was followed by the phrase "to the extent and in the manner permitted by law," such phrase negated the possibility of a union shop; thus, making the agreement acceptable under the right to work laws. *Lewis v. Hixson*, 174 F. Supp. 241 (W.D. Ark. 1959).

An agreement providing that the local union will be bargaining agent for employees, but does not require that employees be or become union members, nor that the contractor must request workmen from the union, is not a violation of this amendment. *Williams v. Arthur J. Arney Co.*, 240 Ark. 157, 398 S.W.2d 515 (1966).

Hiring Halls.

The hiring hall arrangement sought by the union is prohibited by the Constitution and the laws of this state in that such arrangement, which made register of applicants maintained at the hall the exclusive source of employees, had the effect of excluding persons from employment who failed to join or affiliate with a union, thus, accomplishing by indirection what they were prohibited by law from doing directly. *Kaiser v. Price-Fewell, Inc.*, 235 Ark. 295, 359 S.W.2d 449 (1962), cert. denied, 371 U.S. 955, 83 S. Ct. 511, 9 L. Ed. 2d 501 (1963).

The states are not empowered by the Taft Hartley Act to enact a right-to-work law prohibiting union operated, exclusive hiring halls which do not discriminate between union members and nonmembers. *Laborers' Int'l Union of N. Am., Local 107 v. Kunco, Inc.*, 472 F.2d 456 (8th Cir. 1973).

Jurisdiction of Chancery Court.

Where the conduct in dispute and the parties are subject to the exclusive and primary jurisdiction of the National Labor Relations Board, a state chancery court has no jurisdiction under this amendment. *International Hodcarriers v. Cone-Huddleston, Inc.*, 241 Ark. 140, 406 S.W.2d 366 (1966).

Municipal Employees.

Municipal employees have a right under this amendment to belong to labor unions, but the municipality is not required to bargain collectively with the unions to which such employees belong. *City of Fort Smith v. Arkansas State Council No. 38*, 245 Ark. 409, 433 S.W.2d 153 (1968).

Negotiation.

Courts refusal to vacate injunction against picketing for closed shop contract does not prevent union from negotiating on an equal footing. *Self v. Taylor*, 224 Ark. 524, 275 S.W.2d 21 (1955).

Picketing.

A demand by a union that a collective bargaining agreement contain a provision in violation of this section, coupled with picketing in an attempt to enforce such demand, is grounds for the issuance of an injunction prohibiting such picketing. *International Ass'n of Machinists v. Goff-McNair Motor Co.*, 223 Ark. 30, 264 S.W.2d 48 (1954).

Peaceful picketing as a protest against substandard wages was not prohibited by this amendment. *Self v. Wisener*, 226 Ark. 58, 287 S.W.2d 890 (1956).

The fact that labor dispute did not exist between employer and employees did not of itself render picketing unlawful. *Self v. Wisener*, 226 Ark. 58, 287 S.W.2d 890 (1956).

Evidence was not sufficient to establish that picketing was for purpose of forcing employees to join union. *Self v. Wisener*, 226 Ark. 58, 287 S.W.2d 890 (1956); *McDaniel Bros. Constr. Co. v. Tolbert*, 228 Ark. 555, 309 S.W.2d 326 (1958).

Peaceful picketing to protest the hiring of nonunion labor cannot be restrained by a state court under authority of this amendment if the parties are subject to the jurisdiction of the National Labor Relations Board. *Mitcham v. Ark-La Constr. Co.*, 239 Ark. 1162, 397 S.W.2d 789 (1965).

Cited: *International Bhd. of Elec. Workers, Local 295 v. Broadmoor Bldrs., Inc.*, 225 Ark. 260, 280 S.W.2d 898 (1955); *Mason v. Jernigan*, 260 Ark. 385, 540 S.W.2d 851 (1976).

§ 2. Enforcement of amendment — Legislation authorized.

The General Assembly shall have power to enforce this article by appropriate legislation.

Cross References. Right to employment, § 11-3-301 et seq.

AMEND. 35. WILD LIFE — CONSERVATION — ARKANSAS STATE GAME AND FISH COMMISSION.

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 7, 1944, by a vote of 115,214 for and 72,797 against. See Acts 1945, p. 770.

Effective Dates. Ark. Const. Amend. 35, § 8 (part): July 1, 1945.

RESEARCH REFERENCES

UALR L.J. Survey — Constitutional Law, 12 UALR L.J. 161.

CASE NOTES

Cited: *Commission on Judicial Discipline & Disability v. Digby*, 303 Ark. 24, 792 S.W.2d 594 (1990).

§ 1. Commission created — Members — Powers.

The control, management, restoration, conservation and regulation of birds, fish, game and wildlife resources of the State, including hatcheries, sanctuaries, refuges, reservations and all property now owned, or used for said purposes and the acquisition and establishment of same, the administration of the laws now and/or hereafter pertaining thereto,

shall be vested in a Commission to be known as the Arkansas State Game and Fish Commission, to consist of eight members. Seven of whom shall be active and one an associate member who shall be the Head of the Department of Zoology at the University of Arkansas, without voting power.

CASE NOTES

ANALYSIS

In general.
Legislative power.
Rules and regulations.
Shooting grounds.
Timber harvest.

In General.

The commission has been given full and complete administrative power and authority to promulgate rules and regulations necessary for the conservation and preservation of all wildlife including not only the power to establish a bag limit, set the seasons in which to hunt and fish, and the penalty for violations but also the power to levy a license fee on all hunting dogs just so long as such license fees are not unreasonable or arbitrary and are for regulatory purposes and not for revenue. *Arkansas State Game & Fish Comm'n v. W.R. Wrape Stave Co.*, 76 F. Supp. 323 (E.D. Ark. 1948); *W.R. Wrape Stave Co. v. Arkansas State Game & Fish Comm'n*, 215 Ark. 229, 219 S.W.2d 948 (1949); *State ex rel. Wright v. Casey*, 225 Ark. 149, 279 S.W.2d 819 (1955).

This amendment, adopted in 1944, created the Game and Fish Commission as an independent constitutional agency with the clear power to control, manage, restore, conserve, and regulate the birds, fish, game, and wildlife resources of the state; and the commission has broad discretion in carrying out this purpose. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

Even though this amendment gives broad powers to the Fish and Game Commission, the Commission is subservient to, and bound by, Ark. Const., Art. 2, § 22. *Arkansas Game & Fish Comm'n v. Lindsey*, 299 Ark. 249, 771 S.W.2d 769 (1989).

Legislative Power.

This amendment is complete within itself and prior legislative acts whether

directive or restrictive in nature have been superseded. *State ex rel. Wright v. Casey*, 225 Ark. 149, 279 S.W.2d 819 (1955); *Dennis v. State*, 26 Ark. App. 294, 764 S.W.2d 466 (1989).

Legislation purporting to manage and regulate birds, fish, game, and wildlife resources is unconstitutional in violation of this section, which has expressly reserved exclusive authority to the Game and Fish Commission. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958); *Smith v. McNair*, 231 Ark. 49, 328 S.W.2d 262 (1959); *Fowler v. State*, 283 Ark. 325, 676 S.W.2d 725 (1984).

Rules and Regulations.

Rules and regulations promulgated under this amendment must reasonably tend to correct some evil and promote some interest of the commonwealth not violative of any direct or positive mandate of the constitution. *Shellnut v. Arkansas State Game & Fish Comm'n*, 222 Ark. 25, 258 S.W.2d 570 (1953); *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

Shooting Grounds.

It is not the duty of the commission to acquire lands by eminent domain in order to establish shooting grounds where the public may kill migratory fowls nor does it have such power. *Arkansas State Game & Fish Comm'n v. Gill*, 260 Ark. 140, 538 S.W.2d 32 (1976).

Timber Harvest.

The commission had the power to enter into a contract with a timber contractor to harvest timber from a wild life management area as such action was not ultra vires and the commission was not found to have acted arbitrarily and unlawfully. *Arkansas State Game & Fish Comm'n v. Stanley*, 260 Ark. 176, 538 S.W.2d 533 (1976).

Cited: *Rockefeller v. Hogue*, 244 Ark. 256 Ark. 930, 512 S.W.2d 540 (1974); 1029, 429 S.W.2d 85 (1968); *Arkansas White v. Hankins*, 276 Ark. 562, 637 State Game & Fish Comm'n v. Eubank, S.W.2d 603 (1982).

§ 2. Qualifications and appointment of members — Terms of office of first commission.

Commissioners shall have knowledge of and interest in wildlife conservation. All shall be appointed by the Governor. The first members of the Commission shall be appointed by the Governor for terms as follows: One for one year, one for two years, one for three years, one for four years, one for five years, one for six years, and one for seven years. Each Congressional District must be represented on the Commission.

CASE NOTES

Congressional Districts.

This section, providing that the State Game and Fish Commission should consist of seven members to be appointed by the Governor, each congressional district required to be represented on the commission, means that the Governor must make

sure that at all times there is a resident of each and every congressional district on the commission. *Drennen v. Bennett*, 230 Ark. 330, 322 S.W.2d 585 (1959).

Cited: *Rockefeller v. Hogue*, 246 Ark. 712, 439 S.W.2d 805 (1969).

§ 3. Term of office of members.

Upon the expiration of the foregoing terms of the said Commission, a successor shall be appointed by the Governor for a term of seven years, which term of seven years shall thereafter be for each member of the Commission. No Commissioner can serve more than one term and none can succeed himself.

§ 4. Oath of office — Members serve without compensation — Expenses — Payment.

Each Commissioner shall take the regular oath of office provided in the Constitution and serve without compensation other than actual expenses while away from home engaged entirely on the work of the Commission.

§ 5. Removal of members — Hearing — Review and appeal.

A Commissioner may be removed by the Governor only for the same causes as apply to other Constitutional Officers, after a hearing which may be reviewed by the Chancery Court for the First District with right of appeal therefrom to the Supreme Court, such review and appeal to be without presumption in favor of any finding by the Governor or the trial court.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

RESEARCH REFERENCES

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

CASE NOTES

ANALYSIS

In general.
Complete and adequate remedy.

In General.

This section is self-executing. *Rockefeller v. Hogue*, 244 Ark. 1029, 429 S.W.2d 85 (1968).

Complete and Adequate Remedy.

Injunction by chancery court preventing

appointees of Governor from holding a hearing on Governor's charges against members of Game and Fish Commission was outside the jurisdiction of the court since a complete and adequate remedy at law is provided by this section. *Rockefeller v. Hogue*, 246 Ark. 712, 439 S.W.2d 805 (1969).

§ 6. Vacancies — Filling — Chairman of commission.

Vacancies on the Commission due to resignation or death shall be filled by appointment of the Governor for the unexpired term within thirty days from date of such vacancy; upon failure of the Governor to fill the vacancy within thirty days, the remaining Commissioners shall make the appointment for the unexpired term. A chairman shall be elected annually from the seven members of the Commission to serve one year.

CASE NOTES

Cited: *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

§ 7. Executive secretary and other personnel — Selection — Salaries and expenditures.

The Commission shall elect an Executive Secretary, whose salary shall not exceed that of limitations placed on other constitutional departments; and other executive officers, supervisor, personnel, office assistants, wardens, game refuge keepers, and hatchery employees, whose salaries and expenditures must be submitted to the Legislature and approved by an Act covering specific items in the biennial appropriation as covered by Article XVI Section 4 of the Constitution.

§ 8. Nepotism prohibited — Powers of arrest — Funds — Use — Purposes — Game Protection Fund — Audit of accounts — Resident hunting and fishing licenses — Powers of commission.

No person shall be employed by the Commission who shall be related to any of the Commissioners or any other State officers within the third degree of relationship by blood or marriage. All employed personnel may make arrests for violation of the game and fish laws.

The fees, monies, or funds arising from all sources by the operation and transaction of the said Commission and from the application and administration of the laws and regulations pertaining to birds, game, fish and wildlife resources of the State and the sale of property used for said purposes shall be expended by the Commission for the control, management, restoration, conservation and regulation of the birds, fish and wildlife resources of the State, including the purchases or other acquisitions of property for said purposes and for the administration of the laws pertaining thereto and for no other purposes. All monies shall be deposited in the Game Protection Fund with the State Treasurer and such monies as are necessary, including an emergency fund, shall be appropriated by the Legislature at each legislative session for the use of the Game and Fish Commission as hereto set forth. No monies other than those credited to the Game Protection Fund can be appropriated.

All money to the credit of or that should be credited to the present Game Protection Fund shall be credited to the new Game Protection Fund and any appropriation made by the Legislature out of the Game Protection Fund shall be construed to be for the use of the new Commission and out of the new Game Protection Fund.

The books, accounts and financial affairs of the Commission shall be audited by the State Comptroller as that department deems necessary, but at least once a year.

Resident hunting and fishing license, each, shall be One and ⁵⁰/₁₀₀ Dollars annually, and shall not exceed this amount unless a higher license fee is authorized by an Act of Legislature.

The Commission shall have the exclusive power and authority to issue licenses and permits, to regulate bag limits and the manner of taking game and fish and furbearing animals, and shall have the authority to divide the State into zones, and regulate seasons and manner of taking game, and fish and furbearing animals therein, and fix penalties for violations. No rule or regulations shall apply to less than a complete zone, except temporarily in case of extreme emergency.

Said Commission shall have the power to acquire by purchase, gifts, eminent domain, or otherwise, all property necessary, useful or convenient for the use of the Commission in the exercise of any of its duties, and in the event the right of eminent domain is exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the State Highway Commission. All laws now in effect shall continue in force until changed by the Commission.

All contracts and agreements now in effect shall remain in force until the date of their expiration.

This amendment shall not repeal, alter or modify the provisions of any existing special laws under the terms of which a County Game Commission has been created:

The Commission shall be empowered to spend such monies as are necessary to match Federal grants under the Pittman-Robertson or similar acts for the propagation, conservation and restoration of game and fish.

This amendment shall become effective July 1, 1945.

CASE NOTES

ANALYSIS

Eminent domain.
—Hunting grounds.
—Payment for land.
Enforcement powers.
Fish farming.
Funds.
Legislative powers.
Licenses.
Powers of commission.
Rules and regulations.
—Challenge.
—Constitutionality.
—Zones.

Eminent Domain.

Commission has the authority to determine what property is needed for the particular object in view, and its discretion will not be interfered with by the courts unless its discretion is abused. *W.R. Wrape Stave Co. v. Arkansas State Game & Fish Comm'n*, 215 Ark. 229, 219 S.W.2d 948 (1949); *State Game & Fish Comm'n v. Hornaday*, 219 Ark. 184, 242 S.W.2d 342 (1951).

This section is complete in itself and failure of State Game and Fish Commission to follow requirements of prior acts relative to condemnation of land is immaterial as prior acts have been superseded. *W.R. Wrape Stave Co. v. Arkansas State Game & Fish Comm'n*, 215 Ark. 229, 219 S.W.2d 948 (1949).

Project of commission was not changed from public to private merely because private interests contributed to project. *State Game & Fish Comm'n v. Hornaday*, 219 Ark. 184, 242 S.W.2d 342 (1951).

The provisions of Ark. Const., Art. 2, § 22, apply to the powers of the Game and Fish Commission and private property

cannot be taken, appropriated, or damaged for public use without just compensation. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

Where the Game and Fish Commission was proposing to create a lake and desired to have its agents and employees go on private land for the purpose of making and conducting surveys and appraisals in connection with the project, and some landowners objected to the entering of their land by such agents and employees, the commission was required to obtain an easement for the purpose of conducting and making such surveys and appraisals. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978).

—Hunting Grounds.

Commission cannot acquire land by eminent domain for establishment of public duck hunting ground since such purpose is not within its powers for the control, management, restoration, conservation and regulation of wildlife. *Hampton v. Arkansas State Game & Fish Comm'n*, 218 Ark. 757, 238 S.W.2d 950 (1951).

—Payment for Land.

Payment into registry of court of sum of money for acquisition of lands by Game and Fish Commission on last day of fiscal year was not unlawful, even though lands were not acquired until after fiscal year had ended, if obligation of commission under project was incurred prior to end of fiscal year. *State Game & Fish Comm'n v. Hornaday*, 219 Ark. 184, 242 S.W.2d 342 (1951).

Enforcement Powers.

Game and Fish officers are empowered

to make arrests for violation of the game and fish laws, and in making such arrests, those officers may also conduct a search of the person or property of the accused, including his vehicle, in accordance with A.R.Cr.P. 12. *State v. Henry*, 304 Ark. 339, 802 S.W.2d 448 (1991).

Game and Fish Commission's wildlife officer did not have the authority to arrest defendant for driving while intoxicated; therefore, the arrest was illegal. *Uilkie v. State*, 309 Ark. 48, 827 S.W.2d 131 (1992).

The circuit court committed no error in confiscating and forfeiting to the State defendant's pickup truck and shotgun as part of his sentence for violating the regulation that prohibits night hunting. *Crow v. State*, 56 Ark. App. 100, 938 S.W.2d 874 (1997).

Fish Farming.

Regulation providing that it shall be unlawful for any person to abandon or to permit to go to waste the eatable portion of any game or fish in the state at any season of the year was invalid insofar as it affected fish farmers. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

Funds.

Legislature had no authority to appropriate funds from game protection fund for payment of bounties for killing of wolves to prevent destruction of cattle and other livestock. *Arkansas Game & Fish Comm'n v. Edgmon*, 218 Ark. 207, 235 S.W.2d 554 (1951).

Legislative Powers.

This section divests the legislature of all of its powers to conserve the wild life resources of this state, except those powers expressly reserved therein, being the power to make appropriations and to increase the annual resident hunting and fishing licenses. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

While this amendment gives the legislature the power to appropriate, it does not give the legislature the power to manage the operations of the Game and Fish Commission. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

The legislature's restriction in an appropriation bill limiting the amount of money the Game and Fish Commission may

spend on its magazine violates the separation of powers doctrine and this amendment. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

Licenses.

The statute fixing the annual license fee for fox hounds has been repealed and superseded by the regulations of the Game and Fish Commission under the authority of this section. *State ex rel. Wright v. Casey*, 225 Ark. 149, 279 S.W.2d 819 (1955).

The people, in enacting this section intended that the Game and Fish Commission should collect from all resident hunters and fishermen a license fee of \$1.50 each for the privilege of hunting and fishing until such time as the legislature should authorize a higher fee to be collected. *State ex rel. Wright v. Casey*, 225 Ark. 149, 279 S.W.2d 819 (1955).

The Game and Fish Commission can issue licenses and permits for residents so long as their cost does not exceed the maximum set by the legislature, and this amendment does not say the legislature can set only one fee for all game or fish. If the fee set by the commission for any resident hunting or fishing license or permit conflicts with the power of the legislature, then the commission's action must yield; both cannot set maximum fees for a resident to hunt and fish in Arkansas. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

Powers of Commission.

The commission has full and complete administrative power and authority to promulgate rules and regulations necessary for the conservation and preservation of all wildlife including not only the power to establish a bag limit, set the seasons in which to hunt and fish, and the penalty for violations, but also the power to levy a license fee on all hunting dogs, just so long as such license fees are not unreasonable and arbitrary and are for regulatory purposes and not for revenue. *State ex rel. Wright v. Casey*, 225 Ark. 149, 279 S.W.2d 819 (1955).

Although Ark. Const., Art. 5, § 31, provides that no appropriation shall be made except for "defraying the necessary expenses of government what is necessary,"

there is no conflict between Ark. Const., Art. 5, § 31, and this amendment where the legislature is attempting to substitute its judgment for that of the Game and Fish Commission on a question of management of resources, something it cannot do. Ark. Const., Art. 5, § 31, and this amendment are not irreconcilable; this amendment gave the commission more power to act independently than other state agencies that are not independent constitutional agencies. *Chaffin v. Arkansas Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988).

Although the Game and Fish Commission has broad discretion in carrying out its power, its power to regulate the manner of taking game does not translate into a general power to regulate the general possession of all firearms on city, county, state, or federally maintained roads or rights-of way. *Arkansas Game & Fish Comm'n v. Murders*, 327 Ark. 426, 938 S.W.2d 854 (1997).

Under the provisions of this amendment, the Arkansas Game and Fish Commission was given authority to promulgate Regulation 18.02, prohibiting the hunting and killing of wildlife at night and imposing penalties for violations. *Crow v. State*, 56 Ark. App. 100, 938 S.W.2d 874 (1997).

Rules and Regulations.

Under this amendment, regulations have the effect of law. *Dennis v. State*, 26 Ark. App. 294, 764 S.W.2d 466 (1989).

Former § 15-43-240 (repealed), concerning the prohibition of lighting devices for nighttime shooting, was enacted before this amendment was adopted to be effective in 1945. Under the provisions of this amendment, the Arkansas Game and Fish Commission was given full and complete

authority to promulgate rules and regulations necessary for the conservation and preservation of all wildlife, including regulations setting penalties for violations. *Dennis v. State*, 26 Ark. App. 294, 764 S.W.2d 466 (1989).

—Challenge.

A licensed fisherman who frequently fished in a lake affected by an Arkansas Game and Fish Commission regulation, which provided that black bass under 15 inches long could not be taken, had standing to challenge such regulation on constitutional grounds. *Magruder v. Arkansas Game & Fish Comm'n*, 287 Ark. 343, 698 S.W.2d 299 (1985).

—Constitutionality.

Amended Regulation 18.04, regarding firearms, held unconstitutionally overbroad because its wording is so inclusive that it may affect the rights of non-hunters who possess loaded or uncased firearms on city, county, state, or federally maintained roads or rights-of way. *Arkansas Game & Fish Comm'n v. Murders*, 327 Ark. 426, 938 S.W.2d 854 (1997).

—Zones.

The Game and Fish Commission can make every acre in state a separate zone and, as long as the commission does so with demonstrable justification related to its constitutionally-defined purposes, the zones would not be illegal. Thus, the commission could make a zone of a single lake and it was not an unconstitutional or otherwise improper use of the commission's authority to make one lake a zone for the purpose of regulating the fishing there. *Magruder v. Arkansas Game & Fish Comm'n*, 293 Ark. 39, 732 S.W.2d 849 (1987).

AMEND. 36. POLL TAX EXEMPTION.

Members of the armed forces of United States.

Any citizen of Arkansas, while serving in the armed forces of the United States, may vote in any election, without having paid a poll tax, if otherwise qualified to vote in any such election.

Publisher's Notes. This amendment was proposed by initiated petition and adopted at the general election on Nov. 7,

1944, by a vote of 151,564 for and 38,964 against. See Acts 1945, p. 774.

AMEND. 37. [REPEALED.]

Publisher's Notes. This amendment was repealed by Ark. Const. Amend. 56, § 5.

AMEND. 38. COUNTY LIBRARIES.

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 5,

1946, by a vote of 64,859 for and 60,262 against. See Acts 1947, p. 1077.

§ 1. Petition for tax levy — Election.

Whenever 100 or more taxpaying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of maintaining and operating a public county library or a county library service or system and shall specify a rate of taxation not to exceed five mills on the dollar, the question as to whether said tax shall be levied shall be submitted to the qualified electors of such county at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

FOR a _____ mill tax on real and personal property to be used for maintenance and operation of a public county library or county library service or system.

AGAINST a _____ mill tax on real and personal property to be used for maintenance and operation of a public county library or county library service or system. [As amended by Const. Amend. 72, § 4.]

Publisher's Notes. Prior to amendment by Const., Amend. 72, § 4, this section read: "Whenever 100 or more tax paying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of maintaining a public county library or a county library service or system and shall specify a rate of taxation not exceeding one mill on the dollar, the question as to whether said tax shall be levied shall be submitted to the qualified electors of such county at a general county election. Such petition must be filed at least thirty days prior to

the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

"FOR a _____ mill tax on real and personal property to be used for maintenance of a public county library or county library service or system.

"AGAINST a _____ mill tax on real and personal property to be used for maintenance of a public county library or county library service or system."

Cross References. Counties with two districts, § 13-2-403.

CASE NOTES

Cited: Weems v. Anderson, 257 Ark. 376, 516 S.W.2d 895 (1974).

§ 2. Result of election — Certification — Record — Tax levy — Funds — Disbursement.

The election commissioners shall certify to the County Judge the result of the vote. The County Judge shall cause the result of the election to be entered of record in the County Court. The result so entered shall be conclusive unless attacked in the courts within thirty days. If a majority of the qualified electors voting on the question at such election vote in favor of the specified tax, then it shall thereafter be continually levied and collected as other general taxes of such county are levied and collected; provided, however, that such tax shall not be levied against any real or personal property which is taxed for the maintenance of a city library, pursuant to the provisions of Amendment No. 30; and no voter residing within such city shall be entitled to vote on the question as to whether county tax shall be levied. The proceeds of any tax voted for the maintenance of a county public library or county library service or system shall be segregated by the county officials and used only for that purpose. Such funds shall be held in the custody of the County Treasurer. No claim against said funds shall be approved by the County Court unless first approved by the County Library Board, if there is a county Library Board functioning under Act 244 of 1927 [§§ 17-1001—17-1011], or similar legislation.

Publisher's Notes. The remaining sections of Acts 1927, No. 244, are codified in § 13-2-401 et seq.

§ 3. Raising, reducing or abolishing tax — Petition and election.

Whenever 100 or more taxpaying electors of any county having library tax in force shall file a petition in the County Court asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and entered of record as provided in Section 2 hereof, and the result as entered of record shall be conclusive unless attacked in the courts within thirty days. Subject to the limitations of Section 5(e) hereof, the tax shall be lowered, raised or abolished, as the case may be, according to the majority of qualified electors voting on the question at such election. If lowered or raised, the revised tax shall thereafter be continually levied and collected and proceeds used in the manner and for the purposes as provided in Section 2 hereof. [As amended by Const. Amend. 72, § 5.]

Publisher's Notes. Prior to amendment by Ark. Const. Amend. 72, § 5, this section read: "Whenever 100 or more tax

paying electors of any county having library tax in force shall file a petition in the County Court asking that such tax be

raised, reduced or abolished, the question shall be submitted to the qualified electors at a general county election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and entered of record as provided in Section 2 hereof, and the result as entered of record shall be conclusive unless attacked

in the courts within thirty days. The tax shall be lowered, raised or abolished, as the case may be, according to the majority of qualified electors voting on the question at such election; provided, however, that it shall not be raised to more than one mill on the dollar. If lowered or raised, the revised tax shall thereafter be continually levied and collected and proceeds used in the manner and for the purposes as provided in Section 2 hereof."

§ 4. Co-ordination of county with city library.

Nothing herein shall be construed as preventing the co-ordination of the services of a city public library and county public library, or the co-ordination of the services of libraries of different counties.

§ 5. Petition for tax levy — Election.

(a) Whenever 100 or more taxpaying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of capital improvements to or construction of a public county library or a county library service or system and shall specify a rate of taxation not to exceed three mills on the dollar, the question as to whether said tax shall be levied shall be submitted to the qualified electors of such county at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

FOR a _____ mill tax on real and personal property to be used for capital improvements to or construction of a public county library or county library service or system.

AGAINST a _____ mill tax on real and personal property to be used for capital improvements to or construction of a public county library or county library service or system.

(b) The voters may authorize the County Court to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized in Section 1 of this Amendment for the purpose of retiring the bonds. The interest rate on any bonds shall not exceed the rate provided in this Constitution. The ballot submitting the question to the voters shall be in substantially the following form:

For a _____ mill tax on real and personal property within the county, to be pledged to an issue or issues of bonds not to exceed \$_____, in aggregate principal amount, to finance capital improvements to or construction of the county library or county library service or system, and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the County Court.

Against a _____ mill tax on real and personal property within the county, to be pledged to an issue or issues of bonds not to exceed \$_____,

in aggregate principal amount, to finance capital improvements to or construction of the county library or county library service or system, and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the County Court.

(c) The maximum rate of any special tax to pay bonded indebtedness, as authorized by paragraph (b) hereof shall be stated on the ballot.

(d) The special tax for payment of bonded indebtedness authorized in paragraph (b) hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections, which may have accumulated, shall be transferred to the general funds of the county, and shall be used for maintenance of the county library or county library service or system.

(e) Notwithstanding any other provision of this Amendment, a tax approved by the voters for the purpose of paying the bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of, premium or interest on, and the reasonable fees of a trustee or paying agent, so long as the bonded indebtedness shall remain outstanding and unpaid. [Added by Const. Amend. 72, § 6.]

AMEND. 39. VOTER REGISTRATION LAWS.

§ 1. Authority to enact registration law.

The General Assembly shall have power to enact laws providing for a registration of voters prior to any general, special, or primary election, and to require that the right to vote at any such election shall depend upon such previous registration.

Publisher's Notes. This amendment was proposed by Senate Joint Resolution in the 1947 session (see Acts 1947, p. 1068). It was approved at the general election on Nov. 2, 1948, by a vote of 135,151 for and 71,934 against. See Acts 1949, p. 1412.

The amendment, as reflected in its enacting clause, specifically supersedes the clause in Ark. Const., Art. 3, § 2, prohibiting voter registration.

CASE NOTES

ANALYSIS

In general.
Poll tax.

In General.

Prior to this amendment the legislature had no power to pass a registration law or make registration a prerequisite to voting,

but this amendment gave the legislature such power. *Faubus v. Miles*, 237 Ark. 957, 377 S.W.2d 601 (1964).

Poll Tax.

This section did not abolish the require-

ment of payment of the poll tax for voting nor authorize the legislature to do so. *Faubus v. Miles*, 237 Ark. 957, 377 S.W.2d 601 (1964) (decision prior to Const. Amend. 51).

AMEND. 40. SCHOOL DISTRICT TAX (CONST., ART. 14, § 3, AS AMENDED BY CONST. AMEND. 11, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 14, § 3, as amended, and is incorporated therein. The amendment was proposed by Senate Joint Resolution (see Acts 1947, p. 1068) and filed in the office of the Secretary of State on March 28, 1947. It was voted upon at the general election on Nov. 2,

1948, and adopted by a vote of 136,576 for and 82,557 against.

Ark. Const., Art. 14, § 3, as amended by Ark. Const. Amend 11 and Ark. Const. Amend. 40, was further amended by Ark. Const. Amend. 74. See notes to Ark. Const., Art. 14, § 3.

AMEND. 41. ELECTION OF COUNTY CLERKS.

Election of county clerk.

The provisions for the election of a County Clerk upon a population basis are hereby abolished and there may be elected a County Clerk in like manner as a Circuit Clerk, and in such cases, the County Clerk may be ex officio Clerk of the Probate Court of such county until otherwise provided by the General Assembly.

Publisher's Notes. This amendment was proposed by House Joint Resolution, No. 3 (see Acts 1951, p. 970) and filed in the office of the Secretary of State on March 20, 1951. It was approved at the general election on Nov. 4, 1952, by a vote of 178,278 for and 123,245 against.

The amendment contained a preliminary paragraph which read "That the Constitution of the State of Arkansas be amended modifying Section 19 of Article 7 and Section 3 of Amendment No. 24 of said Constitution, so as to provide for the election of a County Clerk in all of the said counties of the State, as follow: ..."

Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...".

Effective Dates. Ark. Const. Amend. 41, last paragraph: effective on adoption.

CASE NOTES

Enabling Legislation.

Amendment No. 41, abolishing population requirement for election of county clerk, requires enabling legislation since word "may" is used in amendment; hence plaintiff elected county clerk at 1952 election at which time population of county had declined to less than 15,000 was not entitled to office. *Huggins v. Wacaster*, 223 Ark. 390, 266 S.W.2d 58 (1954).

The act creating office of county clerk for Franklin County under the authority of this section abolishing population requirement violated Amendment No. 14 since act was local and not general. *Huggins v. Wacaster*, 223 Ark. 390, 266 S.W.2d 58 (1954).

AMEND. 42. STATE HIGHWAY COMMISSION.

Publisher's Notes. This amendment was proposed by Senate Joint Resolution, No. 7 (see Acts 1951, p. 970) and filed in the office of the Secretary of State on

March 20, 1951. It was approved at the general election on Nov. 4, 1952, by a vote of 231,529 for and 78,291 against.

CASE NOTES

Cited: Commission on Judicial Discipline & Disability v. Digby, 303 Ark. 24, 792 S.W.2d 594 (1990).

§ 1. Commission created — Members — Powers.

There is hereby created a State Highway Commission which shall be vested with all the powers and duties now or hereafter imposed by law for the administration of the State Highway Department, together with all powers necessary or proper to enable the Commission or any of its officers or employees to carry out fully and effectively the regulations and laws relating to the State Highway Department.

CASE NOTES

ANALYSIS

Chairman.
Congressional districts.
Director of highways.
Powers and duties.

Chairman.

The State Highway Commission being created by constitutional amendment, its chairman is a member of "department of government" and within the constitutional provision that no member or officer of any department of government shall in any way be interested in certain governmental contracts. *Parkin Printing & Stationery Co. v. Arkansas Printing & Lithographing Co.*, 234 Ark. 697, 354 S.W.2d 560 (1962).

Congressional Districts.

This section did not "freeze" the congressional districts as they existed in 1951, but rather it reflected a method and desire of the framers to insure equal representation of the Highway Commission from all parts of the state with an odd number (to avoid tie votes) constituting that membership. *White v. Hankins*, 276 Ark. 562, 637 S.W.2d 603 (1982).

Since this state presently has four Congressional Districts and five Highway Commissioners, it would be impossible to

comply strictly with this section requiring that no two members be from the same district, inasmuch as two members of the Commission would certainly have to be residents of the same district. *White v. Hankins*, 276 Ark. 562, 637 S.W.2d 603 (1982).

Director of Highways.

The director of highways is not a state officer, he is an employee only and, as such, the legislature can appropriate a salary exceeding that of the constitutional limitation. *Bean v. Humphrey*, 223 Ark. 118, 264 S.W.2d 607 (1954).

Powers and Duties.

Legislation which transferred the ministerial duties and powers of the Transportation Safety Agency and the Transportation Regulatory Board to a constitutional body, the Arkansas Highway Commission, did not violate the requirement of separation of powers. The General Assembly may enlarge the powers granted or may subsequently modify or remove them in favor of another agency; and, by its own terms, this section indicates that additional powers and duties may be provided for the State Highway Commission. *Arkansas Motor Carriers Ass'n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990).

Cited: Arkansas State Hwy. Comm'n v. Wood, 264 Ark. 425, 572 S.W.2d 583 (1978).

§ 2. Qualifications and appointment of members — Terms of office of first commission.

Within ten days after the convening of the General Assembly of the State of Arkansas in the year 1953, the Governor, by and with the advice and consent of the Senate, shall appoint five persons who are qualified electors of the State to constitute the State Highway Commission for terms of two, four, six, eight and ten years respectively. The terms of the persons so appointed shall be determined by lot. The Commissioners to be appointed from the State at large; provided, however, that no two Commissioners shall be appointed from any single Congressional District.

In the event of rejection by the Senate of a person whose name has been so submitted, the Governor shall within five days after receipt of written notice from the Secretary of the Senate of such rejection submit the name of another appointee to fill such vacancy. In the event the Governor should within five days thereafter fail to appoint or fail to submit to the Senate for confirmation the name of any person to be appointed, the Senate shall proceed to make the appointment of its own choice.

§ 3. Terms of office of members.

Upon the expiration of the foregoing terms of said Commissioners, a successor shall be appointed by the Governor in the manner provided for in Section 2 for a term of ten years, which term shall thereafter be for each member of the Commission.

§ 4. Removal of members — Hearing — Review and appeal.

A Commissioner may be removed by the Governor only for the same causes as apply to other constitutional officers after a hearing which may be reviewed by the Chancery Court for the First District with right of appeal therefrom to the Supreme Court, such review and appeal to be without presumption in favor of any finding by the Governor or the trial court, and provided further, in addition to the right of confirmation hereinabove reserved to the Senate, the Senate may upon the written request of at least Five (5) of its members that a member or members of the Commission should be removed therefrom, proceed, when in session, to hear any and all evidence pertinent to the reasons for removal. The member or members whose removal is so requested shall be entitled to be heard in the matter and to be represented before the Senate by legal Counsel. These proceedings conducted by the Senate shall be public and a transcript of the testimony so heard shall be prepared and preserved in the journal of the Senate. The taking of evidence either orally or by deposition shall not be bound by the formal rules of evidence. Upon the conclusion of the hearing, the Senate,

sitting as a body in executive session, may remove said member or members of the Commission by a majority vote conducted by secret ballot.

Publisher's Notes. Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned

pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

RESEARCH REFERENCES

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative

Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

§ 5. Vacancies — Filling.

Vacancies on the Commission due to resignations, death or removal shall be filled by appointment of the Governor for the unexpired term within thirty days from the date of such vacancy. Upon failure of the Governor to fill the vacancy within thirty days, the remaining Commissioners shall make the appointment for the unexpired term.

CASE NOTES

Cited: *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991).

§ 6. Director of Highways.

The Commission shall appoint a Director of Highways who shall have such duties as may be prescribed by the Commission or by statute.

AMEND. 43. SALARIES AND EXPENSES OF JUDICIAL OFFICERS.

Salaries and expenses of judges.

The General Assembly shall by law determine the amount and method of payment of salaries and expenses of the judges of the Supreme Court, Circuit Courts, Chancery Courts, and Municipal Courts of Arkansas; provided such salaries and expenses may be increased but not diminished during the term for which such judges are elected; provided further that the salaries of Circuit and Chancery Judges shall be uniform throughout the state.

Publisher's Notes. This amendment was proposed by initiative petition filed in the office of the Secretary of State on June 15, 1956. It was approved at the general election on Nov. 6, 1956, by a vote of 198,566 for and 155,627 against.

This amendment probably supersedes Ark. Const. Amend. 9, § 2.

Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original juris-

diction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts

established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...".

RESEARCH REFERENCES

Ark. L. Rev. Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

AMEND. 44. [REPEALED.]

Publisher's Notes. This amendment was repealed by Ark. Const. Amend. 69, § 1.

AMEND. 45. APPORTIONMENT (CONST., ART. 8, AS AMENDED BY CONST. AMEND. 23, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 8, as amended by Const., Amend. 23, and is incorporated in that article. The amendment was proposed by initiative petition filed in the office of the Secretary of State on July 5, 1956. It was adopted at the general election on Nov. 6, 1956, by a vote of 197,602 for and 143,100 against.

The amendment to Ark. Const., Art. 8, § 3, was held unconstitutional in *Yancey v. Faubus*, 238 F. Supp. 290 (E.D. Ark.

1965). However, it was held in *Faubus v. Kinney*, 239 Ark. 443, 389 S.W.2d 887 (1965), that the remainder of the amendment was not affected. See notes to Ark. Const., Art. 8.

Effective Dates. Ark. Const. Amend. 45, § 2, provided, in part: "... this Amendment shall take effect and be in operation immediately upon its approval and adoption by the people of the State of Arkansas, being self-executing and requiring no enabling act."

AMEND. 46. HORSE RACING AND PARI-MUTUEL WAGERING AT HOT SPRINGS.

Horse racing and pari-mutuel wagering lawful at Hot Springs.

Horse racing and pari-mutuel wagering thereon shall be lawful in Hot Springs, Garland County, Arkansas, and shall be regulated by the General Assembly.

Publisher's Notes. This amendment was proposed by initiative petition filed in the office of the Secretary of State on July

5, 1956. It was approved at the general election on Nov. 6, 1956, by a vote of 219,835 for and 161,630 against.

AMEND. 47. STATE AD VALOREM TAX PROHIBITION.

State ad valorem tax prohibited.

No ad-valorem tax shall be levied upon property by the State.

Publisher's Notes. This amendment was proposed by H.J.R. No. 1 (see Acts 1957, p. 1488) and filed in the office of the Secretary of State on March 27, 1957. It

was approved at the general election on Nov. 4, 1958, by a vote of 139,293 for and 108,135 against.

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — Educational Financing and Equal Protection, 26 Ark. L. Rev. 69.

CASE NOTES

ANALYSIS

In general.
Local tax administered by state.
Transfer tax.

In General.

An ad valorem tax is on property that may be found in the state and it is immaterial that the property may not be moved on any regular route or schedule. There is nothing in the Constitution of the United States or its laws which prevents a state from taxing personal property employed in interstate or foreign commerce like other personal property within its jurisdiction. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), appeal dismissed and cert. denied, 365 U.S. 770, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961).

This section does not prohibit the state from adopting revenue measures, nor does it does not prohibit the state from giving financial assistance to political subdivisions or agencies or from assisting them in collecting taxes that they are lawfully entitled to collect. *Earnhart v. Heath*, 369 F. Supp. 259 (E.D. Ark. 1974).

Because the returns of after-tax contributions to a retirement plan were property, pursuant to Ark. Const. Art. XVI, § 5, and not income, the Arkansas Department of Finance and Administration's attempted tax of the returns under § 26-51-307 was unconstitutional, given the prohibition in this amendment that prohibited an ad valorem tax being levied on property; thus, the trial court properly granted partial summary judgment in favor of the taxpayers. *Weiss v. McFadden*,

— Ark. —, — S.W.3d —, 2003 Ark. LEXIS 378 (June 26, 2003).

Local Tax Administered by State.

Ad valorem tax authorized to be assessed against property of utilities and carriers was a county tax administered by a state agency for the purpose of efficiency and did not violate this section. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), appeal dismissed and cert. denied, 365 U.S. 770, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961).

Requiring proof of payment of local property taxes before issuing state motor vehicle licenses is not a violation of this section. *Earnhart v. Heath*, 369 F. Supp. 259 (E.D. Ark. 1974).

A nondiscriminatory ad valorem tax based upon the proportionate use of rolling stock collected by the state and distributed to the various counties on a proportionate basis is a county tax administered by a state agency for the purpose of efficiency and does not violate this section. *Anderson Trucking Serv., Inc. v. Tax Div., Ark. Pub. Serv. Comm'n*, 261 Ark. 69, 546 S.W.2d 430 (1977).

Transfer Tax.

An excise tax upon real estate transfers, based upon the consideration for the transfer and not the value of the real estate transferred, was not an ad valorem tax upon property in violation of this section. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970).

Cited: *Wells v. Arkansas Pub. Serv. Comm'n*, 272 Ark. 481, 616 S.W.2d 718 (1981).

AMEND. 48. [REPEALED.]

Publisher's Notes. This amendment was repealed by Const., Amend. 56, § 5.

AMEND. 49. [REPEALED.]

Publisher’s Notes. This amendment was repealed by Const., Amend. 62, § 11.

AMEND. 50. ELECTIONS CONDUCTED BY BALLOT OR VOTING MACHINE (CONST., ART. 3, § 3, REPEALED AND NEW SECTIONS ADDED).

Publisher’s Notes. This amendment was proposed by initiative petition and adopted at the general election on Nov. 6, 1962, by a vote of 134,782 for and 132,123 against.

Effective Dates. Const., Amend. 50, § 5: Jan. 15, 1963.

§ 1. Repeal of Article III, Section 3.

Article III, Section 3, of the Constitution of the State of Arkansas is hereby repealed and the following section is substituted therefor.

CASE NOTES

Cited: Walsh v. Campbell, 240 Ark. 1034, 405 S.W.2d 264 (1966).

§ 2. Elections by ballot or voting machines authorized.

All elections by the people shall be by ballot or by voting machines which insure the secrecy of individual votes.

CASE NOTES

Absentee Voters.

Statute providing for absent voters does not violate the residence requirements of the Constitution, and the legislature may

devise methods for conducting an election. Jones v. Smith, 165 Ark. 425, 264 S.W. 950 (1924) (decision under prior Constitutional provision).

§ 3. [Repealed.]

Publisher’s Notes. This section was repealed by Ark. Const. Amend. 81, which was proposed by H.J.R. 1004 during the 2001 Regular Session and adopted at the November 2002 general election. The former section provided: “In elections by ballot every ballot shall be numbered in the order in which it is received, the number

shall be recorded by the election officers on the list of voters opposite the name of the elector who presents the ballot, and the election officers shall be sworn or affirmed not to disclose how any elector voted unless required to do so as witnesses in a judicial proceeding or a proceeding to contest an election.”

CASE NOTES

ANALYSIS

Applicability.
Purpose.
Disclosure of vote.

Violation.
Voter identification.

Applicability.
The electronic voting system used in the

runoff election constituted an election by ballot and was subject to the numbering requirement set out in this section of Ark. Const. Amend. 50. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

Purpose.

The purpose of the constitution's numbering requirement in elections by ballot is to allow for the tracing of votes in the event of an election contest. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

Disclosure of Vote.

A systematic plan to coerce voters to deposit their ballots in manner as discloses their contents to bystanders violates the Constitution. *Jones v. Glidewell*, 53 Ark. 161, 13 S.W. 723 (1890) (decision under prior Constitutional provision).

§ 4. Voting machines.

Voting machines may be used to such extent and under such rules as may be prescribed by the General Assembly.

CASE NOTES

ANALYSIS

Applicability.

Numbering and recording ballots.

Applicability.

Constitutional amendment which specifically provided for a future effective date and that voting machines may be used as may be prescribed by the general assembly did not validate elections held before its effective date regarding adoption of the type of voting machines which, prior to amendment, had been held not to comply with constitution. *City of Little*

Violation.

The numbering requirement set out in this amendment was violated by county election officials where ballot numbers for a runoff election were printed only on the ballot stubs and where, on the day of the election, voter numbers were only recorded on the stubs and not on the upper portion of the ballots, making it impossible to trace votes in an election contest. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

Voter Identification.

Parol evidence may be used in election contest to show the identity of the elector who signed ballot. *Cain v. Carl Lee*, 168 Ark. 64, 269 S.W. 57 (1925) (decision under prior Constitutional provision).

Rock v. Cavin, 238 Ark. 333, 381 S.W.2d 741 (1964).

Numbering and Recording Ballots.

Voting machine that does not make a record of individual votes is contrary to the Constitution in that it would not be possible for election officers to determine how a voter shall have voted should they be required to disclose such information in an election contest or judicial proceeding. *City of Little Rock v. Henry*, 233 Ark. 432, 345 S.W.2d 12 (1961) (decision under prior Constitutional provision).

AMEND. 51. VOTER REGISTRATION.

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 3, 1964, by a vote of 277,087 for and 218,681 against.

Effective Dates. Const., Amend. 51, § 21: Jan. 1, 1965.

Acts 1987, No. 800, § 3: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 11 of Amendment 51 to the Arkansas Constitution requires the

Permanent Registrar to cancel without prior notice, the voter registration of persons who have failed to vote within four (4) consecutive years; that it is preferable that voters be notified prior to cancellation so that they may avoid the cancellation of their voter registration; that this Act amends Amendment 51 to provide such prior notice and that unless it is given immediate effect, some voter registration affidavits may be cancelled without prior notice. Therefore, an emergency

is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Constitutional Amendments, 24 UALR L.J. 635.

§ 1. Statement of policy.

The purpose of this amendment is to establish a system of permanent personal registration as a means of determining that all who cast ballots in general, special and primary elections in this State are legally qualified to vote in such elections, in accordance with the Constitution of Arkansas and the Constitution of the United States.

CASE NOTES

ANALYSIS

Qualifications for jurors.
Third party members.

Qualifications for Jurors.

The Constitution contains no qualifications for jurors and act passed to provide for the selection of grand and petit jurors until registration under this section provided lists of qualified voters from which adequate jury panels could be selected. *Coger v. City of Fayetteville*, 239 Ark. 688, 393 S.W.2d 622 (1965); *Harris v. State*, 239 Ark. 771, 394 S.W.2d 135 (1965); *Shipp v. State*, 241 Ark. 120, 406 S.W.2d 361 (1966); *Walker v. State*, 241 Ark. 300, 408 S.W.2d 905 (1966), appeal dismissed,

386 U.S. 682, 87 S. Ct. 1325, 18 L. Ed. 2d 403, rehearing denied, 387 U.S. 926, 87 S. Ct. 2027, 18 L. Ed. 2d 987 (1967).

Third Party Members.

Statute was invalid as it effectively disenfranchised independents and persons belonging to third parties who do not vote in party primaries. *Mears v. City of Little Rock*, 256 Ark. 359, 508 S.W.2d 750 (1974).

Cited: *Smith v. Climer*, 341 F. Supp. 123 (E.D. Ark. 1972); *Coger v. City of Fayetteville*, 239 Ark. 688, 393 S.W.2d 622 (1965); *Tiner v. State*, 239 Ark. 819, 394 S.W.2d 608 (1965); *Mears v. City of Little Rock*, 256 Ark. 359, 508 S.W.2d 750 (1974).

§ 2. Definitions.

As used in this amendment, the terms:

(a) "County Board of Registration" means the County Board of Election Commissioners in each of the several counties of this State.

(b) "Permanent Registrar" means the County Clerk in each of the several counties of this State.

(c) "Deputy Registrar" means the Deputy County Clerk or clerical assistants appointed by the County Clerk.

(d) "Election" means any general, special or primary election held pursuant to any provisions of the Constitution or statutes of the State of Arkansas; provided, that this amendment shall not apply to selection of delegates to party conventions by party committees or to selection of party committeemen by party conventions.

§ 3. Application.

No person shall vote or be permitted to vote in any election unless registered in a manner provided for by this amendment.

§ 4. Permanent registration.

When a voter is once registered under the provisions of this amendment, it is unnecessary for such voter again to register unless such registration is cancelled or subject to cancellation in a manner provided for by this amendment.

CASE NOTES

Cited: Booth v. Smith, 261 Ark. 838, 552 S.W.2d 19 (1977).

§ 5. Duties of registration officials.

(a) Voter registration agencies shall distribute mail voter registration applications, provide assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance, and accept completed voter registration application forms for transmittal to the appropriate permanent registrar via the Secretary of State. Voter registration agencies include the following:

(1) The Office of Driver Services of the Revenue Division of the Department of Finance and Administration and all State Revenue Offices;

(2) Public assistance agencies, which shall mean those agencies that provide services under the Food Stamps, Medicaid, Aid to Families with Dependent Children (AFDC), and the Special Supplemental Food Program for Women, Infants and Children (WIC) programs;

(3) Disabilities agencies, which shall mean agencies that offer state-funded programs primarily engaged in providing services to persons with disabilities;

(4) Public libraries; and

(5) The Arkansas National Guard.

(b)(1) The Secretary of State is designated as the chief election official. The Secretary shall prepare and distribute the pre-addressed postcard mail voter registration application forms described in 51-6 [section 6] of this amendment. Mail registration application forms shall serve for purposes of initial applications to register and shall also serve for changes of name, address, or party affiliation. Bilingual (Spanish/English) forms, braille forms, and large print forms shall be available upon request. The Secretary of State shall make the state mail voter registration application form available for distribution through governmental and private entities with particular emphasis on making them available for organized voter registration programs. Any person may distribute state registration cards. All registration cards shall be distributed to the public without charge.

(2) The Office of Driver Services and State Revenue Offices shall provide voter registration opportunities to those obtaining or renewing drivers licenses, personal identification cards, duplicate or corrected licenses or cards, or changing address or name whether in person or by mail. The Office of Driver Services and State Revenue Offices shall use a computer process, which combines the drivers license and voter registration applications, minimizing duplicative information, and shall have available the federal or state mail voter registration application form, which may be used upon request or when the computer process is not available. If a person declines to apply to register to vote, the Office of Driver Services or State Revenue Office shall retain the record of declination for two (2) years.

(3) All public assistance agencies shall provide a federal or state mail voter registration application form with each application for assistance, and with each recertification, renewal or change of address or name relating to such assistance. Public assistance agencies shall provide voter registration application forms as part of the intake process, or as a combined computer process when a computer process is available. Public assistance agencies shall use a process or form that combines the application for assistance with the voter registration application when available. Public assistance agencies shall also provide declination forms as described in 51-6 [section 6] of this amendment, which shall be retained for two (2) years if an applicant declines to apply to register to vote.

(4) All disabilities agencies shall provide a federal or state mail voter registration application form with each application for services and with each recertification, renewal or change of address or name relating to such services. Disabilities agencies shall provide voter registration application forms as part of the intake process, or as a combined computer process when a computer process is available. Disabilities agencies may use a form that combines the application for services or assistance with the voter registration application when available. If the disabilities agency provides services in a person's home, then the agency shall also provide voter registration services at the person's home. Disabilities agencies shall also provide declination forms as described in 51-6 [section 6] of this amendment, which shall be retained for two (2) years if an applicant declines to apply to register to vote.

(c)(1) Employees of the Office of Driver Services and State Revenue Offices shall provide appropriate nonpartisan voter registration assistance and provide all applicants with a receipt containing the applicant's name and the date of the submission.

(2) Public assistance agencies and disabilities agencies shall train agency employees to provide the same degree of assistance in completing voter registration forms as is provided with regard to the completion of agency forms, unless the applicant refuses such assistance.

(3) Each revenue office, public assistance agency and disabilities agency shall provide ongoing training for employees who will be assisting persons with voter registration applications and shall include

information regarding training procedures in the report filed with the Secretary of State pursuant to § 51-8(d) [section 8(d)] of this amendment.

(4) A person who provides voter registration assistance through any voter registration agency shall not:

(A) Seek to influence an applicant's political preference or party registration;

(B) Display any such political preference or party allegiance;

(C) Make any statement to an applicant or take any action to the purpose or effect of discouraging the applicant from registering to vote;

(D) Make any statement to an applicant or take any action to the purpose or effect of leading the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; or

(E) Disclose any applicant's voter registration information, except as necessary for the administration of voter registration.

(d) The Permanent Registrar shall provide office and clerical facilities and may employ such clerical assistants which he may deem necessary to fulfill the duties imposed by this amendment; provided, that all clerical assistants so employed shall have the qualifications required by law of eligible voters and shall be selected on the basis of competence and without reference to political affiliation.

(e) The State Board of Election Commissioners is authorized and, as soon as is possible after the effective date of this amendment, directed to prescribe, adopt, publish and distribute:

(1) such Rules and Regulations supplementary to this amendment and consistent with this amendment and other laws of Arkansas as are necessary to secure uniform and efficient procedures in the administration of this amendment throughout the State;

(2) a Manual of instruction for the information, guidance and direction of election officials within the state; and

(3) detailed specifications of the registration record files, the voter registration application forms and other registration forms, including voter registration list maintenance forms, all of which shall be consistent with this amendment and uniform throughout the State. [As amended by Acts 1995, No. 599, § 1; 1995, No. 947, § 1; 1995, No. 964, § 1.]

Publisher's Notes. The 1995 amendment by No. 599 rewrote (c)(2); and made minor capitalization changes. The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

CASE NOTES

Administration of Oaths.

Board of election commissioners does not have authority to revise registration

procedure so as to allow oath to be administered by someone other than registrar and his deputies in completion of affidavit

of registration. *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965).

§ 6. Voter registration application forms.

(a)(1) The mail voter registration application form may only require identifying information, including signature or mark, and other information, including data relating to previous registration by the applicant, as is necessary to assess the applicant's eligibility and to administer voter registration and other parts of the election process.

(2) Such forms shall include, in identical print, statements that:

(A) Specify voter eligibility requirements;

(B) Contain an attestation that the applicant meets all voter eligibility requirements;

(C) Specify the penalties provided by law for submission of a false voter registration application;

(D) Inform applicants that where they register to vote will be kept confidential; and

(E) Inform applicants that declining to register will also be kept confidential.

(3) The following information will be required of the applicant:

(A) Full name;

(B) Mailing address;

(C) Residence address and any other information necessary to identify the residence of the applicant;

(D) If previously registered, the name then supplied by the applicant, and the previous address, county, and state;

(E) Date of birth;

(F) A signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration;

(G) If the applicant is unable to sign his or her name, the name, address, and telephone number of the person providing assistance;

(H) If the applicant has a current and valid driver's license, the applicant's driver's license number;

(I) If the applicant does not have a current and valid driver's license, the last four (4) digits of the applicant's social security number; and

(J) If the applicant does not have a current and valid driver's license number or social security number, the Secretary of State will assign the applicant a number which will serve to identify the applicant for voter registration purposes, and this number shall be placed on the application.

(4) The following information may be requested on the registration card, but it shall not be required:

(A) Telephone number where the applicant may be contacted; and

(B) Political party with which the applicant wishes to be affiliated, if any.

(5) The mail voter registration application shall not include any requirement for notarization or other formal authentication.

(6) The mail voter registration application form shall include the following questions along with boxes for the applicant to check “yes” or “no” in response:

(A) “Are you a citizen of the United States of America and an Arkansas resident?”;

(B) “Will you be eighteen (18) years of age on or before election day?”;

(C) “Are you presently adjudged mentally incompetent by a court of competent jurisdiction?”;

(D) “Have you ever pleaded guilty or nolo contendere to, or found guilty of a felony without your sentence having been discharged or pardoned?”; and

(E) “Do you claim the right to vote in another county or state?”.

(7) The mail voter registration application form shall include the following statements immediately following the questions asked in subdivision (a)(6) of this section:

(A) “If you checked “No” in response to either questions A or B, do not complete this form.”;

(B) “If you checked “Yes” in response to one or more of questions C, D, or E, do not complete this form.”; and

(C)(i) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter, must be submitted with the mailed registration form in order to avoid the additional identification requirements upon voting for the first time; or

(ii) When the state acquires the capacity to match the registrant’s driver’s license number and the registrant’s social security number to the registrant’s name, the mail-in voter registration application form shall include the following statement in lieu of the statement contained in subdivision (6)(a)(7)(C)(i):

“If your voter registration application form is submitted by mail and you are registering for the first time, in order to avoid the additional identification requirements upon voting for the first time you must submit with the mailed registration form: (a) your driver’s license number; (b) the last four digits of your social security number; (c) a current and valid photo identification; or (d) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address.”

(8) If an applicant for voter registration fails to provide any of the information required by this section, the permanent registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for its completion before the next election for federal office.

(9) The mail voter registration application shall be pre-addressed to the Secretary of State.

(b)(1) The voter registration application portion of the process used by the Office of Driver Services and state revenue offices shall include:

(A) The question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(B) A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes;

(C) A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes;

(D) Voter registration eligibility requirements;

(E) Penalties provided by law for providing false information;

(F) An attestation that the applicant meets each eligibility requirement; and

(G) A space for the applicant's signature or mark.

(2) The voter registration application portion shall require the signature of the applicant under penalty of perjury, but shall not require notarization or other formal authentication.

(c) Public assistance agencies and disabilities agencies shall provide, in addition to the federal or state mail voter registration application form, a declination form, to be approved by the State Board of Election Commissioners, which includes the following question and statements:

(1) The question, in prominent type, "IF YOU ARE NOT REGISTERED TO VOTE WHERE YOU LIVE NOW, WOULD YOU LIKE TO APPLY TO REGISTER TO VOTE HERE TODAY? YES ... NO ...";

(2) The statement in close proximity to the question above and in equally prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME";

(3) The statement, "APPLYING TO REGISTER OR DECLINING TO REGISTER TO VOTE WILL NOT AFFECT THE AMOUNT OF ASSISTANCE THAT YOU WILL BE PROVIDED BY THIS AGENCY";

(4) The statement, "IF YOU WOULD LIKE HELP IN FILLING OUT THE VOTER REGISTRATION APPLICATION FORM, WE WILL HELP YOU. THE DECISION WHETHER TO SEEK OR ACCEPT HELP IS YOURS. YOU MAY FILL OUT THE APPLICATION FORM IN PRIVATE";

(5) The statement, "IF YOU BELIEVE THAT SOMEONE HAS INTERFERED WITH YOUR RIGHT TO REGISTER OR TO DECLINE TO REGISTER TO VOTE, YOUR RIGHT TO PRIVACY IN DECIDING WHETHER TO REGISTER OR IN APPLYING TO REGISTER TO VOTE, OR YOUR RIGHT TO CHOOSE YOUR OWN POLITICAL PARTY OR OTHER POLITICAL PREFERENCE, YOU MAY FILE A COMPLAINT WITH THE SECRETARY OF STATE AT " (filled in with the address and telephone number of the Secretary of State's office);

(6) The statement, "IF YOU DECLINE TO REGISTER TO VOTE, THE FACT THAT YOU HAVE DECLINED TO REGISTER WILL

REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES”; and

(7) The statement, “IF YOU DO REGISTER TO VOTE, THE OFFICE AT WHICH YOU SUBMIT A VOTER REGISTRATION APPLICATION WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES”. [As amended by Acts 1971, No. 828, § 1; 1995, No. 947, § 2; 1995, No. 964, § 2; 2003, No. 995, § 1.]

Amendments. The 1971 amendment added (a)(8)(b).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

The 2003 amendment added (a)(3)(H) through (a)(3)(J); deleted former (a)(4)(B) and redesignated former (a)(4)(C) as present (a)(4)(B); in (a)(6), substituted “form shall include the following questions along with boxes for the applicant to check ‘yes’ or ‘no’ in response” for “shall be pre-addressed to the Secretary of State”; added (a)(6)(A) through (a)(9); and made related and gender-neutral changes.

The 2003 (2nd Ex. Sess.) amendment added (a)(7)(C)(ii); and substituted “provide any of the information required by” for “answer the questions included in subdivision (a)(6) of” in (a)(8).

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

Acts 2003 (2nd Ex. Sess.), No. 8, § 4: Dec. 22, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the federal Help America Vote Act establishes deadlines for the state’s compliance with the act’s voter registration requirements; and that the immediate passage of this act is necessary to ensure the state meets its deadlines. Therefore, an emergency is declared to exist and this

act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Publisher’s Notes. Prior to amendment by Acts 1971, No. 828, subdivision (8) read: “number or name of the voter’s school district and number or name of the voter’s precinct.”

The proviso to subdivision (a)(8)(b) read exactly as it appeared in the 1971 amendment prior to further amendment in 1995.

Acts 1971, No. 828, § 2 read: “The amendment of Subsection (8) of Section 6 of Amendment 51 of the Constitution of the State of Arkansas, as provided in Section 1 hereof, is hereby made in conformance with the provisions of Section 19 of said Amendment 51 to the Constitution of the State of Arkansas, it being the determination of the General Assembly that said Amendment is germane to Amendment 51 and is consistent with its policy and purposes.”

CASE NOTES

ANALYSIS

Constitutionality.
Additional information limited.
Authority of election commissioners.
Name.
Oath of registrant.

Constitutionality.

Requirement in subdivision (a)(1) of this section that the name of a female registrant be prefixed by “Miss” or “Mrs.” to reflect past or present marital status,

there being no comparable requirement for male registrants, discriminates against women in violation of equal protection clause of the Fourteenth Amendment to the Constitution of the United States. *Walker v. Jackson*, 391 F. Supp. 1395 (E.D. Ark. 1975).

Additional Information Limited.

Requiring registrant to give party affiliation and race on record of voting form was not consistent with purpose of this

amendment and board of election commissioners cannot require such information under provisions of subsection (c). *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965).

Authority of Election Commissioners.

Section 19 provides that authority of board of election commissioners under this section is one of implementation rather than one of creation. *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965).

Name.

Under Arkansas law, when registering to vote women are entitled to use what-

ever name they desire as long as the use is not for fraudulent purposes and, thus, a requirement of the county registrar-clerk that a married woman register under her husband's surname and that a divorced woman register under her former husband's surname is invalid. *Walker v. Jackson*, 391 F. Supp. 1395 (E.D. Ark. 1975).

Oath of Registrant.

Board of election commissioners does not have authority to revise registration procedure so as to allow oath to be administered by someone other than registrar and his deputies in completion of affidavit of registration. *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965).

§ 7. Registration record files.

(a) By the deadline to establish a computerized statewide voter registration database under the federal Help America Vote Act of 2002, including any waivers or extensions of that deadline, the Secretary of State shall define, maintain, and administer the official, centralized, and interactive computerized voter registration list for all voters legally residing within the State. The list shall include:

(1) The name, address, county, precinct, assigned unique identifier and registration information of every legally registered voter in the state;

(2) The inactive registration records of persons who have failed to respond to address confirmation mailings described in § 10 of this amendment;

(3) List maintenance information for each person receiving address confirmation notices or final address confirmation notices, or both, and the person's response; and

(4) Cancelled voter registration records and documentation noting the reason for cancellation.

(b) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(c) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal, state, county, municipal, school, or other office in the state.

(d) The permanent registrar of each county shall maintain copies of that county's precinct voter registration list from the statewide computerized list as necessary for holding elections.

(e) The computerized list shall be coordinated with other state agency records on felony status as maintained by the Arkansas Crime Information Center, records on death as maintained by the State Department of Health, and driver's license records maintained by the Office of Driver Services, according to § 9 of Amendment 51 to the Arkansas Constitution.

(f) A person with an inactive voter registration status may activate his or her voting status by appearing to vote at the precinct in which he

or she currently resides or by updating his or her voter registration records with the permanent registrar of the county in which he or she resides.

(g) The county board of election commissioners or other lawfully designated election officials shall cause the appropriate precinct voter registration lists to be at the polling places on the date of elections, and shall return them at the close of the election to the office of the permanent registrar with the ballot boxes.

(h) If the legal residence of a voter is renamed, renumbered, or annexed, the permanent registrar or any local election official may change the name or number of the legal residence on the voter's registration record and any other voting records. Within fifteen (15) days after the records are changed to reflect the new name or number of the residence, the permanent registrar shall notify the voter by mail that the change has been made.

(i)(1) The Secretary of State and any permanent registrar in the state, may obtain immediate electronic access to the information contained in the computerized list.

(2) All voter registration information obtained by any local election official in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(3) The Secretary of State shall provide the support as may be required so that local election officials are able to enter the information. [As amended by Acts 1971, No. 299, § 1; 1973, No. 149, §§ 1-4; 1977, No. 563, § 1; 1991, No. 410, § 1; 1995, No. 947, § 3; 1995, No. 964, § 3; 2003, No. 995, § 2.]

Amendments. The 1971 amendment substituted the word "Affidavit" for "Affidavits" preceding the words "of Registration" in subdivision (a)(3) and added the fifth paragraph. The 1973 amendment inserted the words "or Supplement Record of Voting Form" in subdivisions (a)(2) and (3) and subsection (b) and (d).

The 1977 amendment, in the first sentence of subsection (c), substituted "permanent registrars" for "the Permanent Registrar" preceding "shall provide," and deleted the words "securely fastened" following "shall contain"; and added the second and third sentences.

The 1991 amendment added (f).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

The 2003 amendment rewrote this section.

The 2003 (2nd Ex. Sess.) amendment added "By the deadline ... extensions of that deadline" in (a); and, in (i), substituted "The Secretary of State and any

permanent registrar" for "Any elected official" and deleted "including any local election official" following "in the state."

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

Acts 2003 (2nd Ex. Sess.), No. 8, § 4: Dec. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the federal Help America Vote Act establishes deadlines for the state's compliance with the act's voter registration requirements; and that the immediate passage of this act is necessary to ensure the state meets its deadlines. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is

vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Preambles. Acts 1973, No. 149, contained a preamble which read: “Whereas, Section 19 of Amendment 51 of the Con-

stitution of Arkansas specifically provides for the amendment of Sections 5 through 15 of said amendment by the General Assembly in the same manner as is required for amendment of laws initiated by the people...”

§ 8. Voter registration application records and reports.

(a)(1) The Office of Driver Services, State Revenue Offices, public assistance agencies, disabilities agencies, and other voter registration agencies shall transmit all completed voter registration applications to the Secretary of State in sufficient time to allow the Secretary of State to transmit the applications to the appropriate permanent registrar no later than ten (10) days after the date of acceptance by the assisting agency. When applications are accepted within five (5) days before the last day of registration for an election, they must be transmitted no later than five (5) days after the date of acceptance at the assisting agency.

(2) The Secretary of State shall transmit all mail voter registration applications to the appropriate permanent registrar no later than ten (10) days after the date of receipt. When applications are received within five (5) days before the last day of registration for an election, they must be transmitted no later than five (5) days after date of receipt. If forms are received by the wrong election office, they shall be forwarded to the appropriate permanent registrar not later than the fifth day after receipt.

(b) The Office of Driver Services, State Revenue Offices, public assistance agencies, disabilities and other voter registration agencies shall collect data on the number of voter registration applications completed or declined at each agency, and any additional statistical evidence that the Secretary of State or the State Board of Election Commissioners deems necessary for program evaluation and shall retain such voter registration data for a period of two (2) years.

(c)(1) The Secretary of State shall collect, maintain, and publish monthly statistical data reflecting the number of new voter registration applications, changes of address, name, and party affiliation, and declinations received by mail and in:

- (A) state revenue offices;
- (B) public assistance agencies;
- (C) disabilities agencies;
- (D) recruitment offices of the Armed Forces of the United States;
- (E) public libraries; and
- (F) offices of the Arkansas National Guard.

(2) Every six (6) months the Secretary of State shall compile a statewide report available to the public reflecting the statistical data collected pursuant to subsection (a). This report shall be submitted to the Federal Election Commission for the national report pursuant to section (9)(a)(3) of the National Voter Registration Act of 1993. The state report shall also include:

- (A) numbers of and descriptions of the agencies, and the method of integrating voter registration in the agencies;
- (B) an assessment of the impact of the National Voter Registration Act of 1993 on the administration of elections;
- (C) recommendations for improvements in procedures, forms, and other matters affected by the National Voter Registration Act of 1993.
- (d) Every six (6) months the state-level administration of each voter registration agency shall issue a report to the Legislative Council and the Secretary of State containing the statistical and other information collected in each agency office, and recommendations for improvements in procedures, forms, and other matters, including training.
- (e) Information relating to the place where a person registered to vote, submitted a voter registration application, or updated voter registration records, and information relating to declination forms is confidential and exempt from the Freedom of Information Act, § 25-19-101, et seq. [As amended by Acts 1989, No. 540, § 1; 1995, No. 947, § 4; 1995, No. 964, § 4.]

Amendments. The 1989 amendment added (b).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

U.S. Code. The National Voter Regis-

tration Act of 1993, referred to in subdivisions (c)(2), (c)(2)(B), and (c)(2)(C), is codified as 42 U.S.C.S. § 1973gg et seq.

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

§ 9. Application to register.

- (a) All persons may register who:
 - (1) Are qualified electors and who have not previously registered;
 - (2) Will become qualified electors during the thirty-day period immediately prior to the next election scheduled within the county; or
 - (3) Are qualified electors but whose registration has been cancelled in a manner provided for by this amendment.
- (b) Registration shall be in progress at all times except during the thirty-day period immediately prior to any election scheduled within the county, during which period registration of voters shall cease for that election, but registration during such period shall be effective for subsequent elections.
- (c)(1) The permanent registrar shall register qualified applicants when a legible and complete voter registration application is received and acknowledged by the permanent registrar.
- (2) The permanent registrar shall register qualified applicants who apply to register to vote by mail using the state or federal mail voter registration application form if:
 - (A) A legible and complete voter registration application form is postmarked not later than thirty (30) days before the date of the election, or, if the form is received by mail without a postmark, not later than twenty-five (25) days before the date of an election; and
 - (B)(i) The applicant provides a current valid driver's license number or the last four (4) digits of the applicant's social security number; or

(ii) If an applicant for voter registration does not have a valid driver's license or a social security number, the Secretary of State shall assign the applicant a number that will serve as a unique identifier of the applicant for voter registration purposes.

(d) The permanent registrar shall notify applicants whether their applications are accepted or rejected, or are incomplete. If information required by the permanent registrar is missing from the voter registration application, the permanent registrar shall contact the applicant to obtain the missing information.

(e) The Secretary of State and the Director of the Office of Driver Services shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the Office of Driver Services to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration. The Director of the Office of Driver Services shall enter into an agreement with the Commissioner of Social Security to verify driver's license information according to § 303 of the Federal Help America Vote Act of 2002.

(f) Registration records shall be entered promptly in the computerized statewide registration record files. If the applicant lacks one (1) or more of the qualifications required by law of voters in this state, the permanent registrar shall not register the applicant, but shall document the reason for denying the applicant's registration and promptly file or enter the application and the documented reason for denying registration in the statewide registration record files.

(g) If the permanent registrar has any reason to doubt the qualifications of an applicant for registration, he or she shall submit such application to the county board of election commissioners, and such board shall make a determination with respect to such qualifications and shall instruct the permanent registrar regarding the same.

(h) If any person eligible to register as a voter is unable to register in person at the permanent registrar's office by reason of sickness or physical disability, the permanent registrar shall register the applicant at his or her place of abode within such county, if practicable, in the same manner as if he or she had appeared at the permanent registrar's office.

(i) Notwithstanding other provisions of this amendment, every person in any of the following categories who is absent from the place of his or her voting residence may vote without registration by absentee ballot in any primary, special, or general election held in his or her election precinct if he or she is otherwise eligible to vote in that election:

(1) Members of the armed forces while in active service, and their spouses and dependents;

(2) Members of the Merchant Marines in the United States, and their spouses and dependents;

(3) Citizens of the United States temporarily residing outside the limits of the United States and the District of Columbia, and their spouses and dependents when residing with or accompanying them.

(j)(1) The Secretary of State shall be responsible for providing to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state, information regarding voter registration procedures and absentee ballot procedures.

(2) No later than ninety (90) days after the date of each regularly scheduled general election for federal office, the Secretary of State shall submit a report, based on information submitted to him or her by the permanent registrars of each county, to the Election Assistance Commission on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of the ballots which were returned by the voters and cast in the election.

(3) The Secretary of State shall make the report available to the general public.

(k) Any person whose registration status or voting eligibility is affected adversely by an administrative determination under this amendment may appeal such adverse determination within five (5) days of receipt of notice thereof to the county board of election commissioners. The county board of election commissioners shall act on such appeal and render its decision within ten (10) days of its receipt. Within thirty (30) days after receipt of such decision, any aggrieved party may appeal further to the circuit court of the county.

(l) If an election law deadline occurs on a Saturday, Sunday or legal holiday, the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday. [As amended by Acts 2003, No. 995, § 3.]

Publisher's Notes. The Election Assistance Commission, referred to in subdivision (j)(2), is a federal commission.

Prior to the 1971 amendment, subsection (f) read: "Notwithstanding other provisions of this amendment, all members of the armed forces of the United States and their spouses when residing with or accompanying them, who are otherwise eligible, may vote without registration by absentee ballot in accordance with the laws of this State."

Amendments. The 1993 amendment added (h).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

The 1999 amendment added (j).

The 2003 amendment added the (c)(2)(A) subdivision designation and added (c)(2)(B); added present (e); redesignated former (e) through (h) as present

(f) through (i); added present (j); redesignated former (i) and (j) as present (k) and (l); in present (f), deleted "filed or" preceeding "entered," inserted "computerized statewide" preceeding "registration record files" and "statewide" following "registration in the"; substituted "election commissioners" for "registration" in present (g) and (k); and made gender-neutral and stylistic changes.

U.S. Code. The federal Help America Vote Act of 2002, referred to in (e), is Pub. L. No. 107-252, codified as 42 U.S.C. § 15301nt.

Cross References. Language identical to subsection (j), as amended by Acts 1999, No. 654, § 1, appears at § 7-1-108, as enacted by Acts 1999, No. 653.

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

CASE NOTES

Qualified Electors.

Persons who registered within the twenty day cutoff period provided by this section for registration of voter were not "qualified electors" for the purpose of determining whether petition for dissolution

of school district was signed by majority of qualified electors. *Pike County School Dist. No. 1 v. Pike County Bd. of Educ.*, 247 Ark. 14, 444 S.W.2d 75 (1969).

Cited: *Meyers v. Jackson*, 390 F. Supp. 37 (E.D. Ark. 1975).

§ 10. Transfer and change of status.

(a) Upon a change of legal residence within the county, or a change of name, any registered voter may cause his registration to be transferred to his new address or new name by completing and mailing a federal or state mail voter registration application form, by updating his address at the Office of Driver Services, any state revenue office, public assistance agency, disabilities agency, or other voter registration agency, by signing a mailed request to the permanent registrar, giving his present address and the address at which he was last registered or his present name and the name under which he was last registered, or by applying in person at the office of the permanent registrar.

(b) If the change of legal residence is made pursuant to subsection (a) or subdivision (c)(1) of this section during the thirty-day administrative cut-off period immediately prior to any election scheduled within the county, the registered voter shall retain his right to vote in the scheduled election in the precinct to which he just moved.

(c) The permanent registrar shall conduct a uniform, nondiscriminatory address confirmation program during each odd-numbered year to ensure that voter registration lists are accurate and current. The address confirmation program shall be completed not later than ninety (90) days prior to a primary or general election for federal office. Based on change of address data received from the United States Postal Service or its licensees, or other unconfirmed data indicating that a registered voter no longer resides at his or her registered address, the permanent registrar shall send a forwardable address confirmation notice, including a postage-paid and preaddressed return card, to enable the voter to verify or correct the address information.

(1) If change of address data indicate that the voter has moved to a new residence address in the same county and, if the county is divided into more than one (1) congressional district, the same congressional district, the address confirmation notice shall contain the following statement:

"We have received notification that you have moved to a new address in _____ County (or in the _____ Congressional District). We will reregister you at your new address unless, within ten (10) days, you notify us that your change of address is not a change of your permanent residence. You may notify us by returning the attached postage-paid postcard or by calling (_____) _____-_____. If this is not a permanent change of residence and if you do not notify us within ten (10) days you may be required to update your residence address in order to vote at future elections."

(2) If the change of address data indicates that the voter has moved to a new address in another county or, if a county is divided into more than one (1) congressional district, to a new address in the same county but in a new congressional district, the notice shall include the following statement:

"We have received notification that you have moved to a new address not in _____ County (or not in the _____ Congressional District). If you no longer live in _____ County (or in the _____ Congressional District), you must reregister at your new residence address in order to vote in the next election. If you are still an Arkansas resident, you may obtain a form to register to vote by calling your county clerk's office or the Secretary of State. If your change of address is not a change of your permanent residence, you must return the attached postage-paid postcard. If you do not return this card and continue to reside in _____ County (and in the _____ Congressional District), you may be required to provide identification and update your residence address in order to vote at future elections, and if you do not vote at any election in the period between the date of this notice and the second federal general election after the date of this notice, your voter registration will be cancelled and you will have to reregister in order to vote. If the change of address is permanent, please return the attached postage-paid postcard which will assist us in keeping our voter registration records accurate."

(d) The county clerk may send out an address confirmation to any voter when they receive unconfirmed information that the voter no longer resides at the address on the voter registration records. The county clerk shall follow the same confirmation procedure as set forth in subsection (c).

(e) Based on change of address information received pursuant to subsections (a) and (c) of this section, the permanent registrar shall:

(1) Update and correct the voter's registration if the information indicates that the voter has moved to a new address within the same county and the same congressional district;

(2) Designate the voter as inactive if the information indicates the voter has moved to a new address in another county or to a new address in another congressional district in the same county or if the address confirmation notices have been returned as undeliverable; or

(3) Cancel the voter registration in the county from which the voter has moved if the voter verifies in writing that he or she has moved to a residence address in another county. [As amended by Acts 1977, No. 882, § 1; 1991, No. 581, § 1; 1995, No. 947, § 6; 1995, No. 964, § 6; 1999, No. 1108, § 1.]

Publisher's Notes. The 1977 amendment, in subsection (a), inserted the third sentence and, in the last sentence, deleted the word "promptly" preceding "shall

make" and added the words "as outlined above."

The 1991 amendment inserted "pursuant to subsection (a), (b), or (c) of this

section" in (a); added present (b) and (c); and redesignated former (b) and (c) as present (d) and (e).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

Amendments. The 1999 amendment inserted present (d) and redesignated former (d) as (e).

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

CASE NOTES

Cited: Booth v. Smith, 261 Ark. 838, 552 S.W.2d 19 (1977).

§ 11. Cancellation of registration.

(a) It shall be the duty of the permanent registrar to cancel the registration of voters:

(1) Who have failed to respond to address confirmation mailings described in section 10 of this amendment and have not voted or appeared to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office that occurs after the date of the address confirmation notice;

(2) Who have changed their residence to an address outside the county;

(3) Who have died;

(4) Who have been convicted of felonies and have not discharged their sentence or been pardoned;

(5) Who are not lawfully qualified or registered electors of this state, or of the county; or

(6) Who have been adjudged mentally incompetent by a court of competent jurisdiction.

(b) It shall be the duty of the permanent registrar of each county upon the registration of a person who has been registered previously in another county or state to notify promptly the permanent registrar of such other county or state of the new registration.

(c)(1) It shall be the duty of the State Registrar of Vital Records to notify promptly the Secretary of State of the death of all residents of this state.

(2)(A) The Secretary of State shall compile a listing of the deceased residents of this state and shall promptly provide this listing to the permanent registrar of each county.

(B) The deceased voter registration shall be cancelled by the permanent registrar.

(d)(1) It shall be the duty of the circuit clerk of each county upon the conviction of any person of a felony to notify promptly the permanent registrar of the county of residence of such convicted felon.

(2)(A) It is the duty of any convicted felon who desires to register to vote to provide the county clerk with proof from the appropriate state or local agency, or office that the felon has been discharged from probation or parole, has paid all probation or parole fees, or has satisfied all terms of imprisonment, and paid all applicable court costs, fines, or restitution.

(B) Proof that the felon has been discharged from probation or parole, paid all probation or parole fees, or satisfied all terms of imprisonment, and paid all applicable court costs, fines, or restitution shall be provided to the felon after completion of the probation, parole, or sentence by the Department of Correction, the Department of Community Correction, the appropriate probation office or the circuit clerk as applicable.

(C) The circuit clerk, or any other entity responsible for collection, shall provide proof to the Department of Correction, the Department of Community Correction, or the appropriate probation office that the felon has paid all applicable court costs, fines, or restitution.

(D) Upon compliance with subdivision (d)(2)(A) of this section, the felon shall be deemed eligible to vote.

(e) Within ten (10) days following the receipt or possession of information requiring any cancellation of registration, other than under section 11(a)(1) of this amendment, the permanent registrar shall cancel the registration, note the date of the cancellation, the reason for the cancellation, and the person cancelling the registration.

(f)(1) The permanent registrar shall, thirty (30) days before cancellation, notify all persons whose registration records are to be cancelled in accordance with section 11(a)(1) of this amendment. The notice may be either by publication or by first class mail. The notice by mail shall be as follows:

“NOTICE OF IMPENDING CANCELLATION OF VOTER REGISTRATION.

According to our records you have not responded to our address confirmation notice and you have not voted in any election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office after the date of the first notice. This may indicate that you no longer live at the residence address printed on the postcard. If your permanent residence address is still the same as the printed address on this postcard **YOU MUST CONFIRM YOUR RESIDENCE ADDRESS** in order to remain on the voter registration list. If you do not return the attached postcard within thirty (30) days after the date postmarked on this card **YOUR REGISTRATION WILL BE CANCELLED** and you will have to re-register to vote.”

(2) When, in response to the notice, a qualified voter requests the permanent registrar not to cancel the voter registration, the voter registration shall not be cancelled under section 11(a)(1) of this amendment.

(g) The permanent registrar is authorized, and may be directed by the county board of registration, to determine by mail check, house to house canvass, or any other reasonable means at any time within the whole or any part of the county whether active record registration files contain the names of any persons not qualified by law to vote. Further, upon application based upon affidavits of one (1) or more qualified voters by the prosecuting attorney for the county, the circuit judge of the

county, for good cause shown, may order the permanent registrar to make sure determination or to cancel the registration of such unqualified persons. [As amended by Acts 1977, No. 744, § 1; 1983, No. 11, § 1; 1987, No. 800, § 1; 1991, No. 581, § 2; 1995, No. 947, § 7; 1995, No. 964, § 7; 2001, No. 560, § 1; 2003, No. 271, § 1; 2003, No. 375, § 1; 2003, No. 1451, § 1.]

Publisher's Notes. This section was amended by two 1987 acts which conflict and cannot be codified together. Acts 1987, No. 800, was the last-enacted amendment and is set out above. Acts 1987, No. 597, § 1, would have amended subsections (a) and (f) to read as follows:

"(a) It shall be the duty of the Permanent Registrar to cancel the registration of voters:

"(1) Who have failed to vote in any election during four (4) successive calendar years immediately preceding the first of January of any year. Provided, the registration of a person who is in the active military service of the United States shall be cancelled for failure to vote only if such person has failed to vote in any election during six (6) successive calendar years immediately preceding the first of January of any year;

"(2) Who have changed their residence to an address outside the county;

"(3) Who have died or changed their name;

"(4) Who have been convicted of felonies and have not discharged their sentence or been pardoned; or

"(5) Who are not lawfully qualified or registered electors of this State, or of the county.

"(f) The Permanent Registrar may send all persons whose Affidavits of Registration are cancelled in accordance with Section 11(a)(1) of this amendment the following notice by first-class mail within ten (10) days after such cancellation: 'NOTICE OF CANCELLATION OF VOTER REGISTRATION. Notice is hereby given that due to your failure to vote in any election in this county during the preceding four (4) calendar years, (six (6) calendar years in the case of persons in active military service of the United States) under the laws of this State your voter registration has been cancelled. If you are still a qualified voter, you may register again at any time.' Alternatively, the Permanent Registrar may publish a list of the

names of all persons whose Affidavits of Registration are cancelled in the previous calendar year in accordance with Section 11(a)(1) of this amendment on or before the 31st day of January of each year in a legal newspaper. To assure proper identification, the name of the person's street or route and the name of the city, town, or community in which the person lives shall be included. The following notice shall be given and shall be followed by the list of names: 'NOTICE OF CANCELLATION OF VOTER REGISTRATION. Notice is hereby given that due to your failure to vote in any election in this county during the preceding four (4) calendar years, (six (6) calendar years in case of persons in active military service of the United States) under the laws of this State your voter registration has been cancelled. If you are still a qualified voter, you may register again at any time.'

The 1991 amendment in (a)(1) substituted "year" for "years" and deleted "[year] and have not responded to the notice prescribed by Section 11(f) of this Amendment" from the end; and added (a)(6).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

Amendments. The 2001 amendment redesignated former (d) as present (d)(1) and added (d)(2).

The 2003 amendment by No. 271, in (d)(2)(A)(ii), substituted "state or local government agency" for "probation office," "probation or parole and paid all probation or parole fees or" for "probation, paid all probation fees, and" and "plus" for "and"; inserted present (d)(2)(B); and redesignated former (d)(2)(B) as present (d)(2)(C).

The 2003 amendment by No. 375 redesignated former (c) as present (c)(1) and substituted "the Secretary of State of the death of all residents of this state" for "the permanent registrar in each county of the death of all residents of such county"; and added (c)(2).

The 2003 amendment by No. 1451 re-

wrote (d)(2)(A); inserted present (d)(2)(B) and (d)(2)(C); and redesignated former (d)(2)(B) as present (d)(2)(D).

Effective Dates. Acts 1987, No. 800, § 3: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 11 of Amendment 51 to the Arkansas Constitution requires the Permanent Registrar to cancel without prior notice, the voter registration of persons who have failed to vote within four (4) consecutive years; that it is preferable that voters be notified prior to cancellation so that they may

avoid the cancellation of their voter registration; that this Act amends Amendment 51 to provide such prior notice and that unless it is given immediate effect, some voter registration affidavits may be cancelled without prior notice. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

CASE NOTES

ANALYSIS

Felony.

Notification of registrar.

Felony.

Where defendant was convicted of a felony in federal court of filing fraudulent income tax returns in an attempt to evade taxes and of making and subscribing false tax returns, the action of the registrar in cancelling defendant's name from the voter registration list of county was lawful and proper because the offense committed was felony within the purpose of this amendment. *Merritt v. Jones*, 259 Ark. 380, 533 S.W.2d 497 (1976).

Although, under this amendment, a felon who has discharged his or her sentence is able to vote, where it was unclear whether or not one voter had discharged

her sentence at the time of the election, it was not error for the trial court to invalidate the votes of four absentee voters, including hers, because they were convicted felons. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

Notification of Registrar.

The requirement of subsection (d) of this section that it is the duty of the circuit clerk of each county upon conviction of any person of a felony to notify the registrar of the county of residence of such felon is not an absolute prerequisite to cancellation of a registration but is one method by which registrar may obtain information concerning disqualification of a voter. *Merritt v. Jones*, 259 Ark. 380, 533 S.W.2d 497 (1976).

Cited: *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

§ 12. Loss or destruction of voter registration records.

In the event any Registration Record or File shall become lost or destroyed, the Permanent Registrar shall prepare, from the remaining Files, temporary copies of the registration records if necessary for the conduct of any election. The Permanent Registrar shall send notice of such fact by first-class mail to any voter whose registration record has been lost, destroyed or mutilated in order that such voter may register again. The previous registration shall be cancelled at the time of the new registration, and in any event within sixty (60) days after mailing of such notice. [As amended by Acts 1995, No. 947, § 9; 1995, No. 964, § 9.]

Publisher's Notes. The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

§ 13. Fail-safe voting.

If a voter presents himself at a polling place on the date of an election but no record of his voter registration can be located by the judges of the election on the precinct voter registration list, such voter shall be permitted to vote only under the conditions set forth in § 7-5-306 or § 7-7-308. [As amended by Acts 1973, No. 149, §§ 5, 6; 1995, No. 947, § 10; 1995, No. 964, § 10.]

Publisher's Notes. The 1973 amendment inserted the words "or previous signature on the Supplement Record of Voting Form" and "or supplement thereto" and deleted "thereon" preceding "are deemed" in subsection (b) and inserted "or

Supplement Record of Voting Form" in subsection (e).

The 1995 amendment by identical acts Nos. 947 and 964 rewrote this section.

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

CASE NOTES

ANALYSIS

Applicability.
Absentee ballots.

Applicability.

Where statutes relating to the appointment of a custodian of absentee ballots are in irreconcilable conflict with subsequently adopted constitutional amendment providing for a system of permanent registration of voters making the county clerk the permanent registrar and prescribing among other duties that of custodian of absentee ballots, such constitutional amendment will supersede the previous statutes. *Henley v. Goggin*, 241 Ark. 348, 407 S.W.2d 732 (1966).

Absentee Ballots.

Where both the applications for absentee ballots, and the ballots, were handed

to the voters and executed on the same occasion, such action is in direct conflict with the requirements of this section. *Bingamin v. City of Eureka Springs*, 241 Ark. 477, 408 S.W.2d 607 (1966).

Where the absentee ballot voter was not provided with an application form, no signature comparison could have been made by the permanent registrar and, thus, there was no compliance with the requirements of Const., Amend. 51, § 13 (d). *Martin v. Hefley*, 259 Ark. 484, 533 S.W.2d 521 (1976).

Absentee ballots were properly excluded where the county clerk permitted a person other than the voter to pick up the absentee ballot and sign the application for it. *Loyd v. Keathley*, 284 Ark. 391, 682 S.W.2d 739 (1985).

§ 14. Voter registration lists.

(a) By the first day of June of each year, and at such other times as may be practicable, all Permanent Registrars shall, and at their discretion at other times may, print or otherwise duplicate and publish lists of registered voters by precincts, and may distribute such lists pursuant to §§ 7-5-105 and 7-5-109. A copy of the most current such list in each precinct shall be furnished the election officials at each precinct at the time the ballot boxes are delivered and such election officials shall post said list at a conspicuous place in the polling area.

(b) By the first day of June of each year, the Permanent Registrar shall certify to the Secretary of State the total number of registered voters in the county. The Secretary of State shall tabulate the total number of registered voters in the state and shall make such informa-

tion available to interested persons upon request. [As amended by Acts 1995, No. 947, § 11; 1995, No. 964, § 11.]

Publisher's Notes. The 1995 amendment by identical acts Nos. 947 and 964, in (a), substituted "pursuant to §§ 7-5-105 and 7-5-109" for "free of cost, or, with the approval of the County Board of Registration, at a price necessary to cover cost of

publication" and made a minor stylistic change; and substituted "Secretary of State" for "State Auditor" twice in (b).

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

§ 15. Penalties.

(a) Any person who shall maliciously and intentionally destroy, steal, mutilate or unlawfully detain or obtain any voter registration form or any Registration Record Files shall be guilty of a felony, and upon conviction thereof shall be fined in the sum of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), or be imprisoned in the State Penitentiary for a period of not less than one (1) year nor more than five (5) years, or both.

(b) Any public official or election official who wilfully violates any provision of this amendment shall be guilty of a misdemeanor, and upon conviction thereof shall also be removed from such office.

(c) Any other person who wilfully violates any provision of this amendment shall be guilty of a misdemeanor. [As amended by Acts 1995, No. 947, § 12; 1995, No. 964, § 12.]

Publisher's Notes. The 1995 amendment by identical acts Nos. 947 and 964 substituted "voter registration form" for "Affidavits of Registration" in (a).

Effective Dates. Identical Acts 1995, Nos. 947 and 964, § 13: January 1, 1996.

§ 16. Severability.

If any provision of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the amendment which can be given effect without the invalid provision or application, and to this end the provisions of this amendment are declared to be severable.

§ 17. Effect on other laws.

This amendment supersedes and repeals the requirement of Amendment No. 8 that a poll tax receipt be presented prior to registration or voting, and further supersedes and repeals Act 19 of 1964 and all other laws or parts of laws in conflict herewith.

RESEARCH REFERENCES

UALR L.J. Kennedy, Initiated Constitutional Amendments in Arkansas: Stroll-

ing Through the Mind Field, 9 UALR L.J. 1.

CASE NOTES

Cited: *Meyers v. Jackson*, 390 F. Supp. 37 (E.D. Ark. 1975); *Perkins v. City of W. Helena*, 514 F. Supp. 770 (E.D. Ark. 1981).

§ 18. Appropriations.

The General Assembly shall make such appropriations as may be required for the effectuation of this amendment.

§ 19. Amendment.

The General Assembly may, in the same manner as required for amendment of laws initiated by the people, amend Sections 5 through 15 of this amendment, so long as such amendments are germane to this amendment, and consistent with its policy and purposes.

CASE NOTES

Authority of Election Commissioners.

This section provides that the authority of board of election commissioners is one

of implementation rather than one of creation. *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965).

§ 20. Short title.

This amendment shall be known as the "Arkansas Amendment for Voter Registration without Poll Tax Payment."

AMEND. 52. COMMUNITY COLLEGES.

Publisher's Notes. This amendment was proposed by initiative petition and adopted at the general election on Nov. 3, 1964, by a vote of 221,199 for and 219,618 against.

Cross References. Community colleges, §§ 6-61-501 et seq., 6-61-601 et seq.

RESEARCH REFERENCES

UALR L.J. Note, Revenue Bonds — The Election Requirement: City of Hot

Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

CASE NOTES

Immunity.

Because Arkansas calls North Arkansas Community Technical College a state agency, allows for substantial local autonomy but provides ultimate state control and, most importantly, funds the agency's general operations primarily from the

state treasury, the college is entitled to Eleventh Amendment immunity. *Hadley v. North Ark. Community Technical College*, 76 F.3d 1437 (8th Cir. 1996), cert. denied, 519 U.S. 1148, 117 S. Ct. 1080, 137 L. Ed. 2d 215 (1997).

§ 1. General Assembly may establish districts to furnish community college instruction and technical training.

The General Assembly may by law provide for the establishment of districts for the purpose of providing community college instruction and technical training. The General Assembly shall prescribe the method of financing such community college and technical institutes, and may authorize the levy of a tax upon the taxable property in such districts for the acquisition, construction, reconstruction, repair, expansion, operation, and maintenance of facilities therefor.

CASE NOTES

Cited: Turner v. Woodruff, 286 Ark. 66, 689 S.W.2d 527 (1985).

§ 2. Prior approval of majority of qualified voters in proposed district required.

No such district shall be created and no such tax shall be levied upon the property in an established district except upon approval of a majority of the qualified electors of such proposed or established district voting thereon. Provided that any millage so approved by the electors of a district shall be a continuing levy until increased, reduced or repealed in such manner as may be provided by law, providing they shall ever remain a community college and shall never be extended into four-year institutions.

AMEND. 53. FREE SCHOOL SYSTEM (CONST., ART. 14, § 1, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 14, § 1, and is incorporated therein. The amendment was proposed by Senate Joint Resolution No. 4. (see Acts 1967, p. 1330) and filed in

the office of the Secretary of State on March 8, 1967. It was approved at the general election on Nov. 5, 1968, by a vote of 244,370 for and 220,057 against.

AMEND. 54. PURCHASE OF PRINTING, STATIONERY AND SUPPLIES.

§ 1. Contracts given to lowest responsible bidder.

The printing, stationery, and supplies purchased by the General Assembly and other departments of government shall be under contracts given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of government shall in any way be interested in such contracts.

Publisher's Notes. This Amendment was proposed by Senate Joint Resolution

No. 6, (see Acts 1973, p. 2225) and filed in the office of the Secretary of State on April

5, 1973. It was approved at the general election on Nov. 5, 1974, by a vote of 259,639 for and 210,830 against.

Const., Amend. 54, § 2 repealed Ark. Const., Art. 19, § 15.

Acts 1983, No. 760, § 1 read: "On the

effective date of this Act, printing, stationery and supplies subject to Amendment 54 of the Arkansas Constitution shall be subject to the provisions of the Arkansas Preference Law, Act 482 of 1979 as amended."

CASE NOTES

ANALYSIS

Bids.

Interest of officer.

—State Highway Commission.

Printing.

—Multilith duplicating.

—Supreme Court Reports.

Bids.

When bids for public purchasing do not have a lowest bid, another bidding must be called for with full notice required by statute. *Woodruff v. Berry*, 40 Ark. 251 (1882) (decision under prior Constitutional provision).

Where a contract is not let to the lowest bidder in accordance with Constitutional provisions, the lowest bidder has no right under the contract entitling him to an injunction to prevent the carrying out of the terms of the contract let. *Arkansas Democrat Co. v. Press Printing Co.*, 57 Ark. 322, 21 S.W. 586 (1893) (decision under prior Constitutional provision).

Interest of Officer.

Where a member or officer of a department of government is a majority stockholder of a corporation entering certain government contracts, such was in violation of former constitutional provision. *Parkin Printing & Stationery Co. v. Arkansas Printing & Lithographing Co.*, 234 Ark. 697, 354 S.W.2d 560 (1962) (decision under prior Constitutional provision).

—State Highway Commission.

The State Highway Commission was created by constitutional amendment, therefore, its chairman is a member of a department of government and within prohibition of former constitutional provision. *Parkin Printing & Stationery Co. v. Arkansas Printing & Lithographing Co.*, 234 Ark. 697, 354 S.W.2d 560 (1962) (decision under prior Constitutional provision).

Printing.

Former Constitutional provision was not violated by statute providing for the appointment of a state printing specifications review committee to study existing printing contracts, evaluate requirements of various departments relative to costs and services, and assist in developing necessary specifications, rules, and regulations. *Kegeles v. Ambort*, 243 Ark. 994, 423 S.W.2d 875 (1968) (decision under prior Constitutional provision).

This amendment permits the state to produce its own duplicating and printing without submitting a bid. *Erxleben v. Horton Printing Co.*, 283 Ark. 272, 675 S.W.2d 638 (1984).

Printing for the General Assembly could be obtained from the Department of Correction printing shop without competitive bids. *Erxleben v. Horton Printing Co.*, 283 Ark. 272, 675 S.W.2d 638 (1984).

—Multilith Duplicating.

Multilith duplicating, whereby duplicates of original copy are made in the office desiring the same, was not printing within the meaning of former Constitutional provision, and a statute authorizing the purchase and use of machines for the performance of such duplication by state offices did not violate that section. *Parkin v. Day*, 250 Ark. 15, 463 S.W.2d 656 (1971) (decision under prior Constitutional provision).

—Supreme Court Reports.

An act providing for the lending of the plates of the Supreme Court Law Reports and for the sale of the volumes printed therefrom violated former constitutional provision. *Hodges v. Lawyers' Co-op. Pub. Co.*, 111 Ark. 571, 164 S.W. 294 (1914) (decision under prior Constitutional provision).

AMEND. 55. REVISION OF COUNTY GOVERNMENT.

Publisher's Notes. This amendment was proposed by H.J.R. No. 20 (see Acts 1973, p. 2230) and filed in the office of the Secretary of State on April 10, 1973. It was approved at the general election on Nov. 5, 1974, by a vote of 242,419 for and 230,014 against.

Cross References. Alternative county organization, § 14-14-601 et seq.

County courts, Ark. Const., Art. 7, § 28. County Government Code, § 14-14-101 et seq.

Effective Dates. Const., Amend. 55, § 7 provided: "Sections 1 and 4 of this Amendment shall be effective January 1, 1977, and all other provisions hereof shall be effective when this Amendment is adopted [November 5, 1974]."

RESEARCH REFERENCES

Ark. L. Rev. Comment, County Government Reorganization in Arkansas, 28 Ark. L. Rev. 226.

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Derden, Survey of Arkansas Law: Constitutional Law, 2 UALR L.J. 188.

Survey of Arkansas Law, Miscellaneous, 6 UALR L.J. 187.

Casey, Arkansas Juvenile Courts: Do Law Judges Satisfy Due Process in Delinquency Cases? 6 UALR L.J. 501.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

CASE NOTES**ANALYSIS**

In general.
Administration of justice.

In General.

The enabling legislation for this amendment was Acts 1977, No. 742, now codified as § 14-14-101 et seq. *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988).

Administration of Justice.

Section 14-14-802 is not unconstitu-

tional and in contravention of subsection (a) of this section on grounds that it requires the expenditure of county funds for state and not county purposes since the administration of justice is not only a state purpose or responsibility but a county's as well. *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

Cited: *Griffin v. State*, 297 Ark. 208, 760 S.W.2d 852 (1988); *Davis v. Fulton County*, 884 F. Supp. 1245 (E.D. Ark. 1995).

§ 1. Power of quorum court.

(a) A county acting through its Quorum Court may exercise local legislative authority not denied by the Constitution or by law.

(b) No county may declare any act a felony or exercise any authority not relating to county affairs.

(c) A county may, for any public purpose, contract, cooperate, or join with any other county, or with any political subdivisions of the State or any other states or their political subdivisions, or with the United States.

CASE NOTES**ANALYSIS**

Circuit court employees' salaries.
Election expenses.
Nepotism.

Public purpose.
Recording fees.

Circuit Court Employees' Salaries.

The quorum court is without discretion

to establish the amount of the salaries of circuit court employees since quorum courts have jurisdiction only over local matters, and a circuit court and its employees are not a local matter. *Venhaus v. State ex rel. Lofton*, 285 Ark. 23, 684 S.W.2d 252 (1985).

Election Expenses.

The amount allowed for voting machine preparation is not fixed by state law and there is nothing in this section to prohibit or to curtail the power of the quorum court from exercising its discretion on the amount to be allowed, so long as it is reasonable. *Union County v. Union County Election Comm'n*, 274 Ark. 286, 623 S.W.2d 827 (1981).

Nepotism.

An ordinance by the quorum court prohibiting nepotism by elected county officials was a valid and properly adopted ordinance. *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979).

Public Purpose.

The collection of solid waste is a public

purpose since the providing of such a service by a county is implied in this section. *Eaton v. McCuen*, 273 Ark. 154, 617 S.W.2d 341 (1981).

Recording Fees.

Where the ordinances of a county quorum court which levied additional local recording fees on deeds and other instruments were inconsistent and in conflict with state statute which established a uniform standard amount of recording fee to be charged throughout the state, such ordinances exceeded the local legislative authority granted to the counties by this section. *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980).

Cited: *Roberts v. Watts*, 263 Ark. 822, 568 S.W.2d 1 (1978); *McCuen v. Harris*, 271 Ark. 863, 611 S.W.2d 503 (1981); *Meyers v. State*, 271 Ark. 886, 611 S.W.2d 514 (1981); *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (1981); *Goodall v. Adams*, 277 Ark. 261, 640 S.W.2d 803 (1982).

§ 2. Composition of quorum court — Power over elective offices.

(a) No county's Quorum Court shall be comprised of fewer than nine (9) justices of the peace, nor comprised of more than fifteen (15) justices of the peace. The number of justices of the peace that comprise a county's Quorum Court shall be determined by law. The county's Election Commission shall, after each decennial census, divide the county into convenient and single member districts so that the Quorum Court shall be based upon the inhabitants of the county with each member representing, as nearly as practicable, an equal number thereof.

(b) The Quorum Court may create, consolidate, separate, revise, or abandon any elective county office or offices except during the term thereof; provided, however, that a majority of those voting on the question at a general election have approved said action.

CASE NOTES

ANALYSIS

No conflict with Art. 13, § 5.
Number of quorum courts.
Ordinances.
Sheriff's office.
Term limits.

No Conflict with Art. 13, § 5.

Prior Supreme Court decision (*Robinson v. Greenwood Dist.*, 258 Ark. 798, 528 S.W.2d 930 (1975)) that held that Sebastian County could not be administered by two separate quorum courts under Ark. Const., Art. 13, § 5, did not hold that this

section effectively repeals Const. Art. 13, § 5, since nothing in this section is inconsistent with Art. 13, § 5, with regard to Sebastian County having two county seats or would result in jury drawn from only one district in Sebastian County being quashed. *Morgan v. State*, 273 Ark. 252, 618 S.W.2d 161 (1981).

Number of Quorum Courts.

Since this amendment makes no provision for any county to have more than one quorum court and makes no reference whatsoever to a county being divided into districts as does Ark. Const., Art. 13, § 5, that section cannot be relied on to maintain two separate quorum courts in Sebastian County. *Robinson v. Greenwood Dist.*, 258 Ark. 798, 528 S.W.2d 930 (1975).

Ordinances.

Notwithstanding the power of Quorum Courts under Ark. Const. Amend. 55,

§ 2(b) and § 14-14-702(2), no county is authorized to pass an ordinance reorganizing its government in a manner contrary to the general law of the state. *Gravett v. Villines*, 314 Ark. 320, 862 S.W.2d 260 (1993).

Sheriff's Office.

The removal of the running of the county jail from the office of the sheriff can only be accomplished by a majority vote at a general election and then only at the conclusion of the term of office. *Gravett v. Villines*, 314 Ark. 320, 862 S.W.2d 260 (1993).

Term Limits.

This amendment is in no way concerned with limiting candidate eligibility and, therefore, does not authorize a county initiative fixing term limits for county officials. *Allred v. McLoud*, 343 Ark. 35, 31 S.W.3d 836 (2000).

§ 3. Power of county judge.

The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court; have custody of county property; hire county employees, except those persons employed by other elected officials of the county.

RESEARCH REFERENCES

Ark. L. Rev. Gingerich, *Mandamus of Unexecuted Executive Discretionary Powers*, 33 Ark. L. Rev. 765.

CASE NOTES

ANALYSIS

County employees.

County museum.

County roads.

Disbursement of funds.

Use of public property for private interests.

County Employees.

The county judge, as an executive officer of the county, is vested exclusively with the responsibility for hiring county employees and with respect to salaries, wages, and other forms of compensation.

McCuen v. Jackson, 265 Ark. 819, 581 S.W.2d 326 (1979); *Horton v. Taylor*, 585 F. Supp. 224 (W.D. Ark. 1984), rev'd on other grounds, *Horton v. Taylor*, 767 F.2d 471 (8th Cir. 1985).

County Museum.

Designation of county building as a museum was not an illegal exaction since this section and § 14-14-1102(b)(3) provide that the County Judge is the custodian of county property and is therefore authorized to determine how county property shall be used; moreover, §§ 14-14-802(b)(2)(C)(v) and 13-5-501 et seq. autho-

rize the County to provide for a county museum. *Haynes v. Faulkner County*, 326 Ark. 557, 932 S.W.2d 328 (1996).

County Roads.

County judges in Arkansas are given the executive power to make discretionary decisions regarding the operation of the system of county roads. *Reding v. Wagner*, 350 Ark. 322, 86 S.W.3d 386 (2002).

Disbursement of Funds.

The provision of this section that the county judge shall authorize and approve disbursement of all appropriated funds supersedes Ark. Const., Art. 7, § 28, relating to disbursement of county funds. *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

Where a county judge refused to pay the salaries of certain court personnel when ordered to do so by a circuit judge, he was not subject to a contempt procedure since, under this section, the county judge was an administrative officer who simply executed the appropriations made by the quorum court; therefore, the county judge

would have acted illegally if he had paid out funds that had not been appropriated for those salaries by the quorum court. *Beaumont v. Adkisson*, 267 Ark. 511, 593 S.W.2d 11 (1980).

This section changed the duties of the county judge from being those of an official who pays claims as a judicial officer to those of an officer who pays claims as an administrative officer. *Venhaus v. Pulaski County Quorum Court*, 291 Ark. 558, 726 S.W.2d 668 (1987).

Use of Public Property for Private Interests.

The trial court properly prohibited the county judge from leasing county property to private interests and from contracting to use county property and employees to perform services for and supply materials to private interests since such activities by the county judge would violate Ark. Const., Art. 16, § 13 and Art. 12, § 5. *Pogue v. Cooper*, 284 Ark. 105, 679 S.W.2d 207 (1984).

Cited: *Clark v. Campbell*, 514 F. Supp. 1300 (W.D. Ark. 1981).

§ 4. Powers of quorum court.

In addition to other powers conferred by the Constitution and by law, the Quorum Court shall have the power to override the veto of the County Judge by a vote of three-fifths of the total membership; fix the number and compensation of deputies and county employees; fill vacancies in elective county offices; and adopt ordinances necessary for the government of the county. The Quorum Court shall meet and exercise all such powers as provided by law.

CASE NOTES

ANALYSIS

Legislative authority.

Vacancy in office.

Legislative Authority.

County quorum court ordinance which required all county constitutional offices to be open to serve the public from 8:00 a.m. to 4:30 p.m. related to the performance of defendant in providing necessary services as a tax collector and, as such, was within the express powers granted the quorum court by this section and not in violation of the separation of powers provisions of the State Constitu-

tion. *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978).

Vacancy in Office.

This section, when read in conjunction with Const., Amend. 29, is complete and self-executing as to the manner of filling vacancies in county offices; accordingly, an act which purports to allow quorum courts to call special elections to fill county judge vacancies is unconstitutional. *Hawkins v. Stover*, 274 Ark. 125, 622 S.W.2d 667 (1981).

Cited: *Dilday v. State*, 300 Ark. 249, 778 S.W.2d 618 (1989).

§ 5. Compensation of county officers fixed by quorum court.

Compensation of each county officer shall be fixed by the Quorum Court within a minimum and maximum to be determined by law. Compensation may not be decreased during a current term; provided, however, during the interim, from the date of adoption of this Amendment until the first day of the next succeeding month following the date of approval of salaries by the Quorum Court, salaries of county officials shall be determined by law. Fees of the office shall not be the basis of compensation for officers or employees of county offices. Per diem compensation for members of the Quorum Court shall be fixed by law.

CASE NOTES

ANALYSIS

In general.

Amendment not self-executing.

Constitutionality of ordinance.

County officers.

In General.

The authority to establish both the number and compensation of all county employees, including deputy sheriffs, is clearly vested in the quorum court of each county pursuant to this section. *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988).

Amendment Not Self-Executing.

This amendment was not self-executing since the legislature was empowered to determine interim salaries for county officials. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).

Constitutionality of Ordinance.

County ordinance held to run contrary

to Arkansas's applicable constitutional and statutory laws that specify and restrict the compensation and expenses that quorum court members and other county officials are entitled to receive. *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997).

County Officers.

The facts were in favor of a holding that defendants were county officers or employees where the defendants conducted their operations out of the county courthouse, the county supplied their office space and utilities, their bonds were payable to the county, the county paid the employer's part of their social security payments, and the county paid the employer's part of their state retirement payments. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).

§ 6. Bonding of county officers.

All County Officers shall be bonded as provided by law.

AMEND. 56. CONSTITUTIONAL OFFICERS — GENERAL ASSEMBLY.

Publisher's Notes. This amendment was proposed by Senate Joint Resolution No. 2 (see Acts 1975 (Extended Sess., 1976), p. 3033) and filed in the office of the Secretary of State on Jan. 28, 1976. It was approved at the general election on Nov. 7, 1976, by a vote of 441,247 for and 236,918 against.

Ark. Const. Amend. 56, § 5, repealed Ark. Const., Art. 19, § 23, and Ark. Const. Amendments. 37 and 48.

Effective Dates. Ark. Const. Amend. 56, § 6: Jan. 1, 1977.

§ 1. Executive department — Composition.

The Executive Department of this State shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, all of whom shall keep their offices at the seat of government, and hold their offices for the term of two (2) years, and until their successors are elected and qualified.

Publisher's Notes. This section may be superseded by Ark. Const. Amend. 63, § 1.

§ 2. [Repealed.]

Publisher's Notes. This section was repealed by Ark. Const. Amend. 70, § 5.

§ 3. [Repealed.]

Publisher's Notes. This section was repealed by Ark. Const. Amend. 70, § 5.

§ 4. Compensation of municipal officers.

Compensation of municipal officers and officials shall be fixed by the governing body of the municipality, not to exceed limits which may be established by law.

CASE NOTES**ANALYSIS**

Expense allowance.
Maximum salary.

Expense Allowance.

Ordinance appropriating \$15,000 and \$3,600 per year to defray expenses of public relations activities of mayor and city clerk, respectively, was valid; however, those city officers were not entitled to one-twelfth each month of the total amount appropriated, but were entitled only to reimbursement up to that amount for public relations expenses actually incurred. *Laman v. Smith*, 252 Ark. 290, 478 S.W.2d 741 (1972) (decision under prior Constitutional provision).

Maximum Salary.

Since funds paid by racing corporations gratuitously to the county sheriff were not paid for any public purpose, were not funds to which the county was entitled, had any interest in, or could demand or file suit for collection of, and were paid neither for any public purpose nor to the detriment of any public obligation, they were not public funds for which the sheriff could be charged and the receipt of such funds by him did not violate the maximum salary provision. *Thomas v. Williford*, 259 Ark. 354, 534 S.W.2d 2 (1976) (decision under prior Constitutional provision).

Cited: *Thompson v. Laman*, 274 Ark. App. 459, 625 S.W.2d 507 (1981).

AMEND. 57. INTANGIBLE PERSONAL PROPERTY.

Publisher's Notes. This amendment was proposed by S.J.R. No. 4 (see Acts

1975 (Extended Sess., 1976), p. 3035) and filed in the office of the Secretary of State

on Jan. 29, 1976. It was approved at the general election on Nov. 7, 1976, by a vote of 634,231 for and 93,277 against.

Cross References. Taxation according to value, Ark. Const., Art. 16, § 5.

§ 1. Intangible personal property — Assessment and taxation.

The General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem.

CASE NOTES

Cited: Scott County v. Frost, 305 Ark. 358, 807 S.W.2d 469 (1991).

§ 2. Effect on other constitutional provisions.

The provisions of this Amendment shall be in lieu of those provisions of Article 16, Section 5 of the Constitution of the State of Arkansas relating to the assessment and taxation of intangible personal property.

Publisher's Notes. Ark. Const., Art. 16, § 5, as originally enacted, was repealed and replaced by Ark. Const. Amend. 59.

AMEND. 58. [REPEALED.]

Publisher's Notes. This section was repealed by Ark. Const. Amend. 80, § 22(D).

AMEND. 59. TAXATION (CONST., ART. 16, § 5 REPEALED; §§ 5, 14, 15, 16 ADDED).

Publisher's Notes. This amendment repealed Ark. Const., Art. 16, § 5, and substituted a new section therefor which appears as Ark. Const., Art. 16, § 5, in the text of the Constitution. The amendment also added Ark. Const., Art. 16, §§ 14-16, which appear in the text of the Constitution. The amendment was proposed by the

General Assembly in 1979 (Extended Sess., 1980). It was voted on at the Nov. 4, 1980, election and adopted by a vote of 649,307 for and 152,629 against. See Wells v. Riviere, 269 Ark. 156, 599 S.W.2d 375 (1980) as to validity of proposal at extended session.

AMEND. 60. 1982 INTEREST RATE CONTROL AMENDMENT (CONST., ART. 19, § 13, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 19, § 13, and is incorporated therein. The amendment

was proposed by H.J.R. No. 7 (see Acts 1981, p. 2374(iv)), and filed in the office of the Secretary of State on March 30, 1981.

It was approved at the general election on Nov. 2, 1982, by a vote of 442,325 for and 302,461 against.

Ark. Const. Amend. 60 provided that

the popular name for this amendment is "The 1982 Interest Rate Control Amendment."

RESEARCH REFERENCES

Ark. L. Rev. Note, Commitment Fees
— To Be, or Not to Be Considered Interest,
43 Ark. L. Rev. 881.

AMEND. 61. COUNTY ROAD TAX.

County quorum courts may annually levy a county road tax not to exceed three (3) mills on the dollar on all taxable real and personal property within their respective counties. Revenues derived from the county road tax shall be used for the sole purpose of constructing and repairing public roads and bridges within the county wherein levied. The authority granted by this amendment shall be in addition to all other taxing authority of the county quorum courts.

Publisher's Notes. This amendment was proposed by S.J.R. No. 1 (see Acts 1981, p. 2374(ii)) and filed in the office of the Secretary of State on March 30, 1981. It was approved at the general election on

Nov. 2, 1982, by a vote of 362,009 for and 322,504 against.

Section 2 of Ark. Const., Amend. 61, repealed Ark. Const., Amend. 3.

CASE NOTES

ANALYSIS

In general.
Apportionment.
Diversion of funds.
Levying taxes.

In General.

Road funds may be expended where raised. *White v. Miller*, 175 Ark. 1078, 1 S.W.2d 814 (1928) (decision under prior Constitutional provision).

Apportionment.

Legislation requiring the road tax fund to be separated according to districts did not prevent the fund from being a single fund as it came into the treasurer's hands. *Hodges v. Prairie County*, 80 Ark. 62, 95 S.W. 988 (1906); *Burrow v. Floyd*, 193 Ark. 220, 99 S.W.2d 573 (1936) (preceding decisions under prior Constitutional provision).

An act apportioning the road tax fund between a city and a county is valid. *Sanderson v. City of Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912) (decision under prior Constitutional provision).

County court's order setting aside 50 percent of road tax fund for purposes designated in the statute authorizing apportionment of the fund is a valid order as within exclusive jurisdiction of the county court. *Burrow v. Floyd*, 193 Ark. 220, 99 S.W.2d 573 (1936) (decision under prior Constitutional provision).

Order of circuit court, on appeal from county court by which circuit court retained jurisdiction of road tax fund for future apportionment, was held a usurpation of the county court's jurisdiction and therefore invalid and void. *Burrow v. Floyd*, 193 Ark. 220, 99 S.W.2d 573 (1936) (decision under prior Constitutional provision).

Diversion of Funds.

The language of this section is an express limitation upon the power of county officials in the expenditure of funds collected by authority thereof, and the apportionment of any part of this fund to the payment of salaries or administrative expenses is prohibited. *Burrow v. Floyd*, 193 Ark. 220, 99 S.W.2d 573 (1936) (decision under prior Constitutional provision).

No part of this fund may be lawfully applied to maintenance of the road commissioner's car and though warrants were not payable to road commissioner he would be liable to account for such payments. *Ladd v. Stubblefield*, 195 Ark. 261, 111 S.W.2d 555 (1937) (decision under prior Constitutional provision).

Statutory provision for payment of part of the county judge's salary from county road fund was held not to violate constitutional provision that road fund shall be used for making and repairing roads and

bridges and for no other purpose. *Lawhorn v. Johnson*, 196 Ark. 991, 120 S.W.2d 720 (1938) (decision under prior Constitutional provision).

Levying Taxes.

In computing the amount of tax to be levied each year, the court may deduct the estimated amount to be derived from the proceeds of the road tax. *Sweptston v. Avery*, 118 Ark. 294, 177 S.W. 424 (1915) (decision under prior Constitutional provision).

AMEND. 62. LOCAL CAPITAL IMPROVEMENT BONDS.

Publisher's Notes. With respect to the requirement for approval of bond issues, this amendment may be superseded by Ark. Const. Amend. 65.

This amendment was proposed by H.J.R. No. 1 (See Acts 1983, p. 2305) and filed in the office of the Secretary of State on Mar. 29, 1983. It was approved at the general election on Nov. 6, 1984, by a vote of 395,336 for and 342,404 against.

Ark. Const. Amend. 62, § 11, repealed Ark. Const. Amends. 13, 17, 25, and 49.

Cross References. Capital development corporations, § 15-4-1001 et seq.

Economic and Industrial Development Revenue Bond Law, § 14-164-501 et seq.

Local Government Bond Act, § 14-164-301 et seq.

Local Government Capital Improvement Revenue Bond Act, § 14-164-401 et seq.

RESEARCH REFERENCES

ALR. Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of private business enterprise. 39 ALR 4th 1096.

Ark. L. Notes. Gitelman, The Arkansas Supreme Court and Municipal Revenue Bonds, 1985 Ark. L. Notes 27.

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499 (1986).

UALR L.J. Legislative Survey, Bonds, 8 UALR L.J. 551.

Arkansas Law Survey, Wiltshire, Business Law, 9 UALR L.J. 83.

Survey — Bonds, 10 UALR L.J. 545.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

CASE NOTES

ANALYSIS

Effect of repeal.
"Operating penny" statute.

Effect of Repeal.

When this amendment repealed Ark. Const. Amend. 13, which amended Ark. Const., Art. 16, § 1, the intent was to repeal only what had been added by the amendment and not the original section of Art. 16, § 1. *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986).

"Operating Penny" Statute.

Legislation implementing this amendment did not repeal the "operating penny" statute; rather, it recognized the continuation of the statute in §§ 14-164-332(b), 14-164-333(a)(2)(A), 14-164-336(c) and 14-164-337(c)(1). *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

Cited: *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

§ 1. Local capital improvement bonds authorized — Election — Taxes — Limit on indebtedness — Suspension of tax levy.

(a) The legislative body of a municipality or county, with the consent of a majority of the qualified electors voting on the question at an election called for that purpose, may authorize the issuance of bonds, to bear interest at a rate not to exceed two percent (2%) per annum above the Federal Reserve Rate at the time of the election authorizing the bonds, for capital improvements of a public nature, as defined by the General Assembly, in amounts approved by a majority of those voting on the question either at an election called for that purpose or at a general election. The General Assembly shall prescribe a uniform method of calling and holding such elections and the terms upon which the bonds may be issued. If more than one purpose is proposed, each shall be stated separately on the ballot. The election shall be held no earlier than thirty (30) days after it is called by the legislative body. The tax to retire the bonds may be an ad valorem tax on real and personal property. Other taxes may be authorized by the General Assembly or the legislative body to retire the bonds.

(b) The limit of the principal amount of bonded indebtedness of the municipality or county which may be outstanding and unpaid at the time of issuance of any bonds secured by a tax on real or personal property, except for bonds issued for industrial development purposes pursuant to Section 2 hereof, shall be a sum equal to ten percent (10%) for a county or twenty percent (20%) for a municipality of the total assessed value for tax purposes of real and personal property in the county or municipality, as determined by the last tax assessment.

(c) The municipality or county may from time to time, suspend the collection of a levy, when not required for the payment of its bonds, subject to the covenants with the bondholders.

CASE NOTES

ANALYSIS

In general.
Assessments.
Cost estimates.
Hospitals.
—Site of buildings.
Interest.
Jails.
Location beyond corporate limits.
Mortgages.
Municipalities.
—Classification of cities.
Notes.
Ordinances.
Plans and specifications.
Public nature.
Revenue bonds.

Single purpose.
Site of buildings.
Statement of purpose.
Tax levy.
Tax liens.
Taxation.

In General.

A county may not undertake the construction of facilities covered by this section except where it has the necessary funds on hand unless the voters have approved. *Woolard v. Thomas*, 238 Ark. 162, 381 S.W.2d 453 (1964); *Johnson v. Cummings*, 281 Ark. 229, 663 S.W.2d 168 (1984) (preceding decisions under prior Constitutional provision).

Bond issue on ballot measure to finance debt on construction of a city convention

center did not create a restraint on city spending, and use of city sales-tax revenue to pay a portion of the costs was not an illegal exaction. *Williams v. City of Fayetteville*, 348 Ark. 768, 76 S.W.3d 235 (2002).

Assessments.

Monthly charges levied against the residents and establishments of a subordinate service district by ordinance is not an unconstitutional property tax since service charges against users within a service district are not taxes and since former similar provision did not apply to assessments for improvement districts. *Eaton v. McCuen*, 273 Ark. 154, 617 S.W.2d 341 (1981) (decision under prior Constitutional provision).

Cost Estimates.

The voters could have a reasonable understanding of the cost of the proposed jail construction if, included in the cost estimate, is the price of the property upon which the county hopes to erect the jail; the actual purchase of the land before the election is both unnecessary and premature. *Johnson v. Cummings*, 281 Ark. 229, 663 S.W.2d 168 (1984) (decision under prior Constitutional provision).

Hospitals.

A special tax in excess of the constitutional limit cannot be levied for the building of a city hospital. *Watkins v. Duke*, 190 Ark. 975, 82 S.W.2d 248 (1935) (decision under prior Constitutional amendment).

A suit to enjoin city officials from proceeding under an ordinance authorizing an election upon the question of construction of a municipal hospital is in the public interest and the cause may be advanced for submission by the Supreme Court. *Railey v. Magnolia*, 197 Ark. 1047, 126 S.W.2d 273 (1939) (decision under prior Constitutional provision).

The authority to issue bonds to erect a hospital depends upon the submission of the question by a referendum to the electors of the city and an affirmative vote upon the subject. *Railey v. Magnolia*, 197 Ark. 1047, 126 S.W.2d 273 (1939) (decision under prior Constitutional provision).

A hospital costing more than could be raised by levy of 1½ mills could not be built since the voters in approving construction of a county hospital limited the building tax levy to 1½ mills. *Sisco v.*

Caudle, 210 Ark. 1006, 198 S.W.2d 992 (1947) (decision under prior Constitutional provision).

The counties have authority to construct, reconstruct, or extend a county hospital and are authorized to levy a tax on the valuation of all property in such county to defray the costs and expense of the construction. *Campster v. Sanderlin*, 212 Ark. 665, 208 S.W.2d 16 (1948); *Hollis v. Erwin*, 237 Ark. 605, 374 S.W.2d 828 (1964); *Davis v. Waller*, 238 Ark. 300, 379 S.W.2d 283 (1964); *Raney v. Raulston*, 238 Ark. 875, 385 S.W.2d 651 (1965) (preceding decisions under prior Constitutional provision).

Where city ordinance was passed providing for a public vote upon question of issuance of bonds for constructing addition to city hospital, and where people voted in favor of such issue, and bonds were sold, equity will enjoin a second ordinance passed, which attempted to change purposes under the first ordinance, upon the ground that the second ordinance constituted a diversion of funds. *Sanders v. Green*, 213 Ark. 943, 214 S.W.2d 67 (1948) (decision under prior Constitutional provision).

County is entitled to acquire an old hospital for use as a county hospital. *Garner v. Lowery*, 221 Ark. 571, 254 S.W.2d 680 (1953) (decision under prior Constitutional provision).

—Site of Buildings.

There being no express provision prohibiting the erection of a hospital on a site outside the county seat, the county court had authority to purchase a site where utilities were available. *Bond v. Kennedy*, 213 Ark. 758, 212 S.W.2d 336 (1948) (decision under prior Constitutional provision).

Interest.

Bonds issued under an ordinance purporting to authorize interest in excess of the constitutional maximum were invalid. *Cotton v. City of Fayetteville*, 284 Ark. 323, 682 S.W.2d 453 (1984) (decision under prior Constitutional provision).

Jails.

Where land for jail construction was to be purchased with existing funds and the construction costs were to be paid from a combination of existing funds and millage increases, an election was necessary be-

fore jail construction could begin, hence, the purchase of the land was merely the first step in the building of the new jail, not a separate, unrelated act; since the overall project of building a county jail necessitated a millage increase, it came squarely within the provisions of this section and an election was mandatory. *Johnson v. Cummings*, 281 Ark. 229, 663 S.W.2d 168 (1984) (decision under prior Constitutional provision).

Location Beyond Corporate Limits.

A city may issue approved bonds to construct a stadium upon land owned by the city adjoining a city-owned park but outside the corporate limits. *Todd v. McCloy*, 196 Ark. 832, 120 S.W.2d 160 (1938) (decision under prior Constitutional provision).

No right exists for a municipality to construct an electric distribution system outside the municipality limits without statutory authorization even with the consent of the department of public utilities. *Arkansas Util. Co. v. Paragould*, 200 Ark. 1051, 143 S.W.2d 11 (1940) (decision under prior Constitutional provision).

The authority for cities to acquire flying fields beyond the corporate limits carries the implied authority to make the field available to the public, and bond money can be applied to the purchase of highway right-of-ways. *Tunnah v. Moyer*, 202 Ark. 821, 152 S.W.2d 1007 (1941) (decision under prior Constitutional provision).

Mortgages.

Where the municipality had the power to mortgage its property, it was subject to foreclosure on the breach of the condition. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960) (decision under prior Constitutional provision).

Municipalities.

—Classification of Cities.

The General Assembly retains the power to organize cities and to classify them in spite of the constitutional amendment relating to municipal improvement bonds. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940) (decision under prior Constitutional provision).

Notes.

Negotiable promissory notes are evidences of indebtedness but are not treasury warrants or script which are prohib-

ited by the Constitution. *Hays v. McDaniel*, 130 Ark. 52, 196 S.W. 934 (1917) (decision under prior Constitutional provision).

Ordinances.

An ordinance providing for various types of street construction and improvement is not void because it fails to specify the amount of bonds to be used in each kind of work. *Rhodes v. Stuttgart*, 192 Ark. 822, 95 S.W.2d 101 (1936) (decision under prior Constitutional provision).

Plans and Specifications.

The sufficiency of the plans and specifications for and estimate of the approximate cost of a proposed hospital and other pre-election procedural matters cannot be questioned for the first time after an election approving the construction of the hospital has been held. *Davis v. Waller*, 238 Ark. 300, 379 S.W.2d 283 (1964) (decision under prior Constitutional provision).

Public Nature.

Bonds may be issued for the construction and equipment and the making of additions to municipal projects, including libraries. *Terry v. Overman*, 194 Ark. 343, 107 S.W.2d 349 (1937) (decision under prior Constitutional provision).

A city may issue bonds for the construction of ornamental standards and electric lighting equipment to provide modern illumination for designated streets. *Todd v. McCloy*, 196 Ark. 832, 120 S.W.2d 160 (1938) (decision under prior Constitutional provision).

The acquisition of a public park and flying field is a single purpose and the authorization may be covered in a single ordinance and the bond issue voted on in a single ballot. *Ragsdale v. Hargraves*, 198 Ark. 614, 129 S.W.2d 967 (1939); *East v. Camden*, 201 Ark. 505, 145 S.W.2d 721 (1940) (preceding decisions under prior Constitutional provision).

A city has the right to pass an ordinance submitting the question of issuance of bonds for constructing an auditorium to the city voters. *Vaughan v. Searcy*, 199 Ark. 585, 135 S.W.2d 319 (1940) (decision under prior Constitutional provision).

The express constitutional grant of authority to erect a modern airport covers the use of the word "incidental," implied by reason of the purpose to be served.

Tunnah v. Moyer, 202 Ark. 821, 152 S.W.2d 1007 (1941) (decision under prior Constitutional provision).

Where "tourism bonds" were issued by city in order to finance construction of a privately owned motel on city property, such bonds were not issued for a purely public purpose pursuant to this section. *Purvis v. City of Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984); *Purvis v. City of Little Rock*, 282 Ark. 129A, 669 S.W.2d 900 (1984) (preceding decisions under prior Constitutional provision).

Revenue Bonds.

For cases discussing validity of revenue bonds decided prior to decisions in *Purvis v. City of Little Rock* and following cases, see *McCutchen v. Siloam Springs*, 185 Ark. 846, 49 S.W.2d 1037 (1932); *Jernigan v. Harris*, 187 Ark. 705, 62 S.W.2d 5 (1933); *Snodgrass v. Pocahontas*, 189 Ark. 819, 75 S.W.2d 223 (1934); *Freeman v. Jones*, 189 Ark. 815, 75 S.W.2d 226 (1934); *Johnson v. Dermott*, 189 Ark. 830, 75 S.W.2d 243 (1934); *Kitchens v. Paragould*, 192 Ark. 271, 90 S.W.2d 761 (1936); *Robinson v. DeValls Bluff*, 197 Ark. 391, 122 S.W.2d 552 (1938); *City of Harrison v. Braswell*, 209 Ark. 1094, 194 S.W.2d 12 (1946); *Jacobs v. Sharp*, 211 Ark. 865, 202 S.W.2d 964 (1947); *Williams v. Harris*, 215 Ark. 928, 224 S.W.2d 9 (1949); *Austin v. Manning*, 217 Ark. 538, 231 S.W.2d 101 (1950); *Rowe v. Housing Authority*, 220 Ark. 698, 249 S.W.2d 551 (1952); *Boswell v. City of Russellville*, 223 Ark. 284, 265 S.W.2d 533 (1954); *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960); *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962); *Miles v. Gordon*, 234 Ark. 525, 353 S.W.2d 157 (1962); *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981) (preceding decisions under prior Constitutional provision).

No constitutional provision authorizes issuance of revenue bonds without approval of the majority of the electors. *Purvis v. City of Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984); *Cotton v. City of Fayetteville*, 284 Ark. 323, 682 S.W.2d 453 (1984) (preceding decisions under prior Constitutional provision); *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986).

The Constitution states that no city or

county shall ever issue interest-bearing evidences of indebtedness without the consent of the electors; the mandate is binding and it includes transparent evasions by which a token commission or other body is created to sign the bonds while disclaiming any responsibility on the part of its creator. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) (decision prior to Const. Amend. 65).

Municipal bonds issued by the city were invalid where there was no approval by election. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) (decision prior to Const. Amend. 65).

The holding in *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986), that the revenue bonds issued by the Hot Springs Advertising and Tourist Promotion Commission were invalid for lack of approval of the electors, did not invalidate revenue bonds issued prior to March 3, 1986, in reliance on the court's earlier decisions. *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986) (decision prior to Const. Amend. 65).

Single Purpose.

Ballots designating improvements to be voted upon as "the construction of a new county jail and extension to courthouse" were proper where buildings, though separated, were considered as one unit if plans, specifications, and estimates were on file at clerk's office. *Jeffrey v. Fry*, 220 Ark. 738, 249 S.W.2d 850 (1952) (decision under prior Constitutional provision).

The requirement of the former section that "each building" be listed separately on the ballot merely means that a courthouse cannot be combined with a jail or hospital or a jail with a hospital and a proposal for a county hospital to consist of two separate units in two separate towns may be voted upon as a single proposal. *Hollis v. Erwin*, 237 Ark. 605, 374 S.W.2d 828 (1964) (decision under prior Constitutional provision).

Site of Buildings.

Nothing in former provision required the county court, prior to the holding of the election to ascertain the will of the voters as to the proposed construction and tax therefor, to designate the site of the proposed hospital. *Rogers v. Parker*, 211

Ark. 957, 203 S.W.2d 401 (1947) (decision under prior Constitutional provision).

Statement of Purpose.

Election did not authorize transfer of funds where voter looking at the language would not have known that a purpose of the ballot was to determine whether the money should have been transferred. *Keeton v. Barber*, 305 Ark. 147, 806 S.W.2d 363 (1991).

Parenthetical statement that jail money was to be transferred for courthouse improvements simply did not constitute the statement of a "purpose" of the ballot as it did not inform the voter that he or she was deciding that issue and, thus, it did not accomplish the transfer. *Keeton v. Barber*, 305 Ark. 147, 806 S.W.2d 363 (1991).

Tax Levy.

The levy of the tax must precede the issuance and sale of the bonds. *Rogers v. Parker*, 211 Ark. 957, 203 S.W.2d 401 (1947) (decision under prior Constitutional provision).

If the maximum tax has already been levied for the construction of a courthouse,

the power of the county to levy any further tax was thereby exhausted and no other such tax may be levied until all bonds issued to pay for construction of the courthouse have been retired. *Rogers v. Parker*, 211 Ark. 957, 203 S.W.2d 401 (1947) (decision under prior Constitutional provision).

Tax Liens.

Cities are authorized to make certain improvements and to issue bonds to pay therefor and to levy additional taxes to redeem the bonds, the lien of such tax being the same as that of other municipal taxes resulting from assessments and general property taxes. *McKenzie v. De Witt*, 196 Ark. 1115, 121 S.W.2d 71 (1938) (decision under prior Constitutional provision).

Taxation.

The power of legislation over taxation is supreme except as limited by the Constitution. *English v. Oliver*, 28 Ark. 317 (1873) (decision under prior Constitutional provision).

§ 2. Issuance of bonds to secure and develop industry — Levy of tax — Suspension of collection — Limit on tax levy.

(a) In addition to the authority for bonded indebtedness set forth in Section 1, any municipality or county may, with the consent of the majority of the voters voting on the question at an election held for that purpose, issue bonds in sums approved by such majority at that election for the purpose of financing facilities for the securing and developing of industry within or near the county or municipality holding the election.

(b) To provide for payment of principal and interest of the bonds issued pursuant to the section, as they mature, the municipality or county may levy a special tax, not to exceed five (5) mills on the dollar of the taxable real and personal property therein. However, the municipality or county may, from time to time, suspend the collection of such annual levy when not required for the payment of its bonds. In no event shall any parcel of real and personal taxable property be subject to a special tax levied under the authority of this Section in excess of five (5) mills for bonds issued under this Section.

CASE NOTES

ANALYSIS

Construction.
Purpose.
Eminent domain.
Issuance of bonds.

Location beyond corporate limits.
Revenue bonds.
Road construction.
Tax levy.
Tourism.

Construction.

The former section was not limited to credit lending situations but was to be construed in the natural and literal meaning of the language employed. *Myhand v. Erwin*, 231 Ark. 444, 330 S.W.2d 68 (1959) (decision under prior Constitutional provision).

Purpose.

The purpose for the adoption of former provision was the people's principal concern to create jobs and thus prevent unemployment and loss of population. *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961) (decision under prior Constitutional provision).

Eminent Domain.

Nothing in the former section, the resolution proposing it, its content or the ballot title under which the people adopted it, even faintly intimated to the voters that it would permit the taking of private property by eminent domain for securing and developing industry or that any power to do so was, or would be, delegated to cities. *City of Little Rock v. Raines*, 241 Ark. 1071, 411 S.W.2d 486 (1967) (decision under prior Constitutional provision).

Issuance of Bonds.

After an election in which the public approved a program to procure industry for the county, the circuit court judge could issue bonds in accordance with this program before a final contract containing all the details was consummated. *Adams v. Tackett*, 236 Ark. 171, 365 S.W.2d 125 (1963) (decision under prior Constitutional provision).

Location Beyond Corporate Limits.

The words "for ... securing and developing of industry ... within or near the county ... holding the election" shall be construed so that this section is not violated in letter or in spirit where the money expended in one county to build a factory in another county will furnish employment to the citizens of both counties. *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961) (decision under prior Constitutional provision).

Revenue Bonds.

For cases discussing validity of revenue bonds decided prior to decisions in *Purvis v. City of Little Rock* and following cases, see *McCutchen v. Siloam Springs*, 185

Ark. 846, 49 S.W.2d 1037 (1932); *Jernigan v. Harris*, 187 Ark. 705, 62 S.W.2d 5 (1933); *Snodgrass v. Pocahontas*, 189 Ark. 819, 75 S.W.2d 223 (1934); *Freeman v. Jones*, 189 Ark. 815, 75 S.W.2d 226 (1934); *Johnson v. Dermott*, 189 Ark. 830, 75 S.W.2d 243 (1934); *Kitchens v. Paragould*, 192 Ark. 271, 90 S.W.2d 761 (1936); *Robinson v. DeValls Bluff*, 197 Ark. 391, 122 S.W.2d 552 (1938); *City of Harrison v. Braswell*, 209 Ark. 1094, 194 S.W.2d 12 (1946); *Jacobs v. Sharp*, 211 Ark. 865, 202 S.W.2d 964 (1947); *Williams v. Harris*, 215 Ark. 928, 224 S.W.2d 9 (1949); *Austin v. Manning*, 217 Ark. 538, 231 S.W.2d 101 (1950); *Rowe v. Housing Authority*, 220 Ark. 698, 249 S.W.2d 551 (1952); *Boswell v. City of Russellville*, 223 Ark. 284, 265 S.W.2d 533 (1954); *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960); *Holmes v. Cheney*, 234 Ark. 503, 352 S.W.2d 943 (1962); *Miles v. Gordon*, 234 Ark. 525, 353 S.W.2d 157 (1962); *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981) (preceding decisions under prior Constitutional provision).

No constitutional provision authorizes issuance of revenue bonds without approval of the majority of the electors. *Purvis v. City of Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984); *Cotton v. City of Fayetteville*, 284 Ark. 323, 682 S.W.2d 453 (1984) (preceding decisions under prior Constitutional provision); *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986).

The Constitution states that no city or county shall ever issue interest-bearing evidences of indebtedness without the consent of the electors; the mandate is binding and it includes transparent evasions by which a token commission or other body is created to sign the bonds while disclaiming any responsibility on the part of its creator. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) (decision prior to Const. Amend. 65).

Municipal bonds issued by the city were invalid where there was no approval by election. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986) (decision prior to Const. Amend. 65).

The holding in *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986), that the revenue bonds issued by

the Hot Springs Advertising and Tourist Promotion Commission were invalid for lack of approval of the electors, did not invalidate revenue bonds issued prior to March 3, 1986, in reliance on the court's earlier decisions. *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986) (decision prior to Const. Amend. 65).

Road Construction.

The issuance of bonds to finance the construction of a road, the primary function of which is to service an industrial site, is permitted and authorized by this amendment notwithstanding that such road may also be of benefit to the public. *Myhand v. Erwin*, 231 Ark. 444, 330 S.W.2d 68 (1959); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960) (preceding decisions under prior Constitutional provision).

Tax Levy.

The section of this amendment providing for the suspension of the collection of the annual tax levy when it is not required for the payment of bonds was intended to give the amendment flexibility and to take care of situations where sufficient funds might become available from other sources which could be applied on the

payment of principal and interest. *Myhand v. Erwin*, 231 Ark. 444, 330 S.W.2d 68 (1959) (decision under prior Constitutional provision).

The former section provided for the payment of revenue bonds issued by a city to obtain money with which to purchase land and construct manufacturing facilities to lease to a company in an attempt to alleviate unemployment; the municipality or county may levy a special tax but does not say that a tax must be levied but is permissible. If the people of the state are willing to burden themselves with a tax, then it is reasonable to think they intended and are willing to pledge surplus revenues. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960) (decision under prior Constitutional provision).

Tourism.

Although the attraction of tourists may in some situations constitute an industry within this section, the Supreme Court is unwilling to attempt to define "tourism" as an industry, beyond the holding that a motel does not qualify for a tax-exempt bond issue. *Purvis v. City of Little Rock*, 282 Ark. 129A, 669 S.W.2d 900 (1984) (decision under prior Constitutional provision).

§ 3. Sale of bonds — Procedure.

The bonds described in Section 2 hereof shall be sold only at public sale after twenty (20) days advertisement in a newspaper having a bona fide circulation in the municipality or county issuing such bonds; provided, however, that the municipality or county may exchange such bonds for bonds of like amount, rate or interest, and length of issue.

CASE NOTES

Convertible Bonds.

The former section did not prohibit county from issuing convertible bonds.

Garner v. Lowery, 221 Ark. 571, 254 S.W.2d 680 (1953) (decision under prior Constitutional provision).

§ 4. Maximum rate of tax stated on ballot — Borrowing prior to issuance of bonds.

The maximum rate of any special tax to pay bonded indebtedness as authorized in Sections 1 and 2 hereof shall be stated on the ballot. After such bond issue has been approved by the electorate, the municipality or county may, prior to the issuance of the bonds, borrow funds on an interim basis, not to exceed three (3) years, and pledge to the payment thereof the tax approved by the voters.

§ 5. Special tax constitutes special fund — Disbursement of surplus.

The special tax for payment of bonded indebtedness authorized in Sections 1 and 2 hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any other purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections which may have accumulated shall be transferred to the general funds of the municipality or county.

CASE NOTES

ANALYSIS

Diversion of funds.
Pledge as to payment.
Surplus funds.

Diversion of Funds.

Contemplated transfer of land by city to federal government for use as army air base under deed containing reverter clause did not constitute a diversion of funds under bond issue providing for acquisition of land needed for air base. *City of Blytheville v. Parks*, 221 Ark. 734, 255 S.W.2d 962 (1953) (decision under prior Constitutional provision).

There was no merit to plaintiff's contention that the proceeds of bonds would not be economically spent as required by this section where no part of the bond proceeds had been spent and no evidence was introduced to show the money would not be spent economically. *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961) (decision under prior Constitutional provision).

Pledge as to Payment.

When the county levying court made an initial levy of two mills to provide a sinking fund for the payment of courthouse bonds, the subsequent holders of the bonds had a positive pledge that the levy would not be reduced and would continue from year to year until all bonds had been paid. *Campster v. Sanderlin*, 212 Ark. 665,

208 S.W.2d 16 (1948) (decision under prior Constitutional provision).

Surplus Funds.

A city cannot use the surplus revenue derived from a tax levied to pay principal and interest on bonds for the construction of a city hall and fire house because the whole of the tax is pledged for that purpose and, since this is a maximum levy, the city must retire these bonds before another can be issued. *City of West Memphis v. Jordan*, 212 Ark. 739, 208 S.W.2d 164 (1948) (decision under prior Constitutional provision).

Use of surplus funds for any purpose except to retire the bonds or to pay the interest thereon together with necessary expenses directly connected with such bond issue and proceedings thereof was contrary to this section. *Stuttgart v. McCuing*, 218 Ark. 34, 234 S.W.2d 209 (1950) (decision under prior Constitutional provision).

An act violates this section insofar as applied to surplus funds collected in the form of tax assessments from property owners since neither the city nor the legislature has authority to divert such funds to another purpose without the consent of the property owners. *Searcy v. Headlee*, 222 Ark. 719, 262 S.W.2d 288 (1953) (decision under prior Constitutional provision).

Surplus left in the bond account after the bonds issued by the industrial development commission created for the purpose of attracting industry to the area had been paid in full was properly ordered paid into the county general fund, rather than turned over to the commission, since

the tax was levied for the purpose of paying bonds, not for the broad purpose of developing industry, and there was no evidence that the commission needed money. *Morton v. Baker*, 254 Ark. 444, 494 S.W.2d 122 (1973) (decision under prior Constitutional provision).

§ 6. Conduct of elections.

The General Assembly may enact laws governing the conduct of elections authorized by this Amendment. Absent the enactment of such laws, such elections shall be held, called and conducted in accordance with the laws governing elections generally. The results of such election shall be published in a newspaper of general circulation in the county or municipality (as the case may be) and any contest of such election or the tabulation of the votes therein shall be brought within thirty (30) days after such publication or shall be forever barred.

CASE NOTES

ANALYSIS

Contests.

Description of purpose.

Nonresidents.

Notice.

Second election after defeat.

Special election.

Suspension of section.

Validity.

Voters.

Contests.

Contestors of an election affecting public welfare to issue bonds to improve a water district under a statute requiring speed were not allowed to use discovery depositions to justify a continuance for over 22 days from the service of summons where the bond sale was advertised for a date two days after that set for trial. *Morris v. City of Fort Smith*, 224 Ark. 722, 276 S.W.2d 36 (1955) (decision under prior Constitutional provision).

Contest of an election on the question of building a county hospital was within the jurisdiction of the county court. *Jones v. Dixon*, 227 Ark. 955, 302 S.W.2d 529 (1957) (decision under prior Constitutional provision).

Description of Purpose.

A ballot providing for a vote for the construction and equipment of a hospital instead of the construction and maintenance, as authorized by ordinance, is in

valid. *Neal v. Morrilton*, 192 Ark. 450, 92 S.W.2d 208 (1936) (decision under prior Constitutional provision).

An election to determine whether a city should issue bonds to erect a hospital, which does not refer to the hospital equipment, is valid since the authority to erect the hospital implies the authority to equip it. *Railey v. Magnolia*, 197 Ark. 1047, 126 S.W.2d 273 (1939) (decision under prior Constitutional provision).

Nonresidents.

A nonresident property owner is not entitled to vote on the question of a bond issue to pave streets at a city election, though his property would be subject to an additional tax. *McKenzie v. De Witt*, 196 Ark. 1115, 121 S.W.2d 71 (1938) (decision under prior Constitutional provision).

Notice.

In the absence of a newspaper being published in a municipality, notice is sufficient if published in a newspaper of a neighboring city. *Lewis v. Tate*, 210 Ark. 594, 197 S.W.2d 23 (1946) (decision under prior Constitutional provision).

Second Election After Defeat.

The question of a bond issue for street improvements may be submitted at a second election after the proposal has been once defeated. *Rhodes v. Stuttgart*, 192 Ark. 822, 95 S.W.2d 101 (1936) (decision under prior Constitutional provision).

Special Election.

Election was not a special election merely because issue as to whether a new jail was to be constructed did not usually appear in most general elections. *Brown v. Bradberry*, 214 Ark. 937, 218 S.W.2d 733 (1949) (decision under prior Constitutional provision).

Suspension of Section.

The Supreme Court cannot suspend the operation of this section of this amendment. *City of Hot Springs v. Creviston*, 288 Ark. 286, 713 S.W.2d 230 (1986).

Validity.

Mere procedural omission in conduct of

election on question of construction of a county jail will not defeat will of majority unless procedural omission prevented a fair expression on the issue. *Brown v. Bradberry*, 214 Ark. 937, 218 S.W.2d 733 (1949) (decision under prior Constitutional provision).

Voters.

The residents of an area in the process of being annexed to a city have no right to vote in municipal bond elections until after the annexation becomes effective. *Tanner v. City of Little Rock*, 261 Ark. 573, 550 S.W.2d 177 (1977) (decision under prior Constitutional provision).

§ 7. Provisions self-executing.

The provisions of this Amendment shall be self-executing.

§ 8. Taxes levied and bonds authorized prior to amendment.

Taxes levied prior to the effective date of this Amendment shall continue in force until abolished, reduced, or increased as provided by law. All bonds and other evidences of indebtedness authorized prior to the effective date of this Amendment shall be governed by the Constitutional provision and laws in effect at the time of authorization.

§ 9. Joint project of various governing bodies — Compact agreement elections.

Whenever two or more cities of the First or Second Class, or incorporated towns, and/or one or more counties and the school districts therein, desire to join together in a combined effort to secure and develop industries within one or more of such cities, towns, counties, and share in the increased revenues estimated to be received by the city, town, or county, or school district, in which the industry or industries are to be located, they may, upon adoption by the governing bodies of each such city, town, school district, or county, enter into a compact setting forth the terms by which each of the participating cities, towns, school districts, and counties is to share in the revenues to be derived from the location of an industrial plant within the compact area through the combined efforts of the various participating cities, towns, school districts, and counties. Upon adoption of such compact by the governing bodies of the participating cities, towns, school districts, and/or counties, the county court of each of the counties involved shall cause a special election to be called within not more than forty-five (45) days from the date of the filing of such compact with the county court. At such special election, the qualified electors of each of the cities, towns, school districts, and counties shall vote on whether to approve

the compact and the method of sharing in increased revenues to be derived by the city, school district, and/or county in which the proposed industry is to be located among the various participating cities, towns, counties, and school districts. The ballot at such election shall be in substantially the following form:

“FOR the establishment of an industrial development compact and the sharing of revenues to be derived from additional taxes to be generated by new industries ☐

AGAINST the establishment of an industrial development compact and the sharing of revenues to be derived from additional taxes to be generated by new industries ☐”

Said election shall be conducted in accordance with the election laws of this State, and the results thereof tabulated and certified to the County Clerk in the manner now provided by law. If a majority of the qualified electors voting on the question vote in favor of the creation of the compact, and the sharing of revenues to be derived from new industries located in the compact area, the said compact shall be implemented in accordance with the terms thereof. If a majority of the qualified electors voting on said issue vote against issue at said special election, no additional election on said issue may be held within one (1) year from the date of said election. The results of said election shall be proclaimed by the county court of each of the counties in which the county and/or cities and towns, or school districts, are located. The results of said election shall be conclusive unless attacked in the courts within thirty (30) days.

CASE NOTES

In General.

Municipalities are authorized to develop public parks and flying fields, and the Constitution allows two cities instead of one to undertake such improvement. *Ragsdale v. Hargraves*, 198 Ark. 614, 129 S.W.2d 967 (1939) (decision under prior Constitutional provision).

Statute providing that two counties, two cities, or a city and a county are

authorized and empowered to join together in a compact to secure industries is authorized. *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960); *Hackler v. Baker*, 233 Ark. 690, 346 S.W.2d 677 (1961) (preceding decisions under prior Constitutional provision).

AMEND. 63. FOUR YEAR TERMS FOR STATE CONSTITUTIONAL OFFICERS.

§ 1. Executive Department — Term of office.

The Executive Department of this State shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General and Commissioner of State Lands, all of whom shall keep their offices at the seat of government, and hold their offices

for the term of four (4) years, and until their successors are elected and qualified.

Publisher's Notes. This amendment was proposed by initiative petition and filed in the office of the Secretary of State on July 2, 1984. It was approved at the general election on Nov. 6, 1984, by a vote of 499,083 for and 277,735 against.

This amendment probably supersedes

Ark. Const., Art. 6, § 1; Ark. Const. Amend. 6, § 1; and Ark. Const. Amend. 56, § 1.

Effective Dates. Ark. Const. Amend. 63, § 2: effective Jan. 1, 1987, and applicable to officers elected at the 1986 general election and thereafter.

RESEARCH REFERENCES

UALR L.J. Kennedy, Initiated Constitutional Amendments in Arkansas: Stroll-

ing Through the Mine Field, 9 UALR L.J. 1.

AMEND. 64. MUNICIPAL COURT JURISDICTION [REPEALED EFFECTIVE JANUARY 1, 2005.]

§ 1. Concurrent jurisdiction — Jurisdictional amount. [Repealed effective January 1, 2005.]

Notwithstanding any provision of this Constitution to the contrary and in addition to jurisdiction now conferred on municipal courts, municipal courts shall have jurisdiction concurrent with circuit courts (a) in matters of contract where the amount in controversy does not exceed three thousand dollars (\$3,000) excluding interest, (b) in suits for the recovery of personal property where the value of the property does not exceed three thousand dollars (\$3,000), and (c) in all matters of damage to personal property where the amount in controversy does not exceed three thousand dollars (\$3,000); provided that the General Assembly may by law increase or decrease the jurisdictional limit by a two-thirds vote of each house of the General Assembly.

Publisher's Notes. This amendment was proposed by House Joint Resolution No. 6 (see Acts 1985, p. 2670) and filed in the office of the Secretary of State on Apr. 16, 1985. It was adopted at the general election on Nov. 4, 1986, by a vote of 361,115 for and 230,187 against.

Sections 1 through 18, 20 through 22, 24, 25, 32, 34 (as amended by Ark. Const. Amend. 24, § 1), 35 (as amended by Ark. Const. Amend. 24, § 2), 39, 40, 42, 44, 45 and 50 of Ark. Const., Art. 7, were repealed by Ark. Const. Amend. 80, § 22, effective July 1, 2001. Ark. Const., Art. 7,

§ 43 is repealed effective January 1, 2005. Ark. Const. Amend. 58, § 1, was repealed effective July 1, 2001. Ark. Const. Amend. 64, § 1, is repealed by Ark. Const. Amend. 80, § 22(E), effective January 1, 2005. Ark. Const. Amend. 77, § 1, was repealed effective July 1, 2001.

Cross References. Municipal court jurisdiction, §§ 16-17-206, 16-17-502.

Effective Dates. Ark. Const. Amend. 64, § 2: effective July 1, 1987, and applicable to all causes of action arising after Nov. 1, 1986.

RESEARCH REFERENCES

UALR L.J. Survey — Civil Procedure, 12 UALR L.J. 135.

CASE NOTES

Real Property Actions.

Arkansas law, constitutional and statutory, provides municipal courts with no authority to hear and decide actions concerning damages to land. Accordingly, a municipal court lacks subject matter ju-

risdiction of a trespass on land action, and because the municipal court has no jurisdiction, the circuit court acquires none on appeal. *Miles v. Southern*, 297 Ark. 274, 760 S.W.2d 868 (1988).

AMEND. 65. REVENUE BONDS.

Publisher's Notes. This amendment was proposed by initiative petition filed in the office of the Secretary of State on July 4, 1986. It was adopted at the general election on Nov. 4, 1986, by a vote of 318,894 for and 275,877 against.

Ark. Const. Amend. 65, § 6, provided, in part, that the provisions of the amendment are self-executing.

This amendment may supersede Ark. Const., Art. 16, § 1, with respect to prohibitions against bond issuance and Ark. Const. Amends. 20 and 62, with respect to requirements for electoral approval.

Effective Dates. Ark. Const. Amend. 65, § 6: effective on adoption.

RESEARCH REFERENCES

ALR. Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of private business enterprise. 39 ALR 4th 1096.

UALR L.J. Survey — Bonds, 10 UALR L.J. 545.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

CASE NOTES

Repayment of Revenue Bonds.

Where user fees are pledged as repayment of revenue bonds, those fees need not be generated by the particular project being funded; user fees pledged to repay the bonds are revenues from the operation of any governmental unit. *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001).

Because this Amendment forbids repaying revenue bonds with assessments from local improvements or taxes, it correspondingly forbids pledging tax revenues to fill the gaps left by using other sources of monies to repay the bonds; in short, using tax revenues to offset losses caused by pledging revenues from user fees to

cover bond indebtedness is indirectly using tax revenues to secure repayment of the bonds, which is prohibited conduct. *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001).

An ordinance complied with the repayment provisions of this Amendment where it reflected that the city "will pledge the fees from the park and recreational facilities owned or operated by the City more specifically defined hereinafter to secure the payment of the principal of and interest on the Bonds." *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001).

Cited: *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998).

§ 1. Issuance — Terms and conditions.

Subject to the provisions of Section 2 hereof, any governmental unit, pursuant to laws heretofore or hereafter adopted by the General Assembly, may issue revenue bonds for the purpose of financing all or a

portion of the costs of capital improvements of a public nature, facilities for the securing and developing of industry or agriculture, and for such other public purposes as may be authorized by the General Assembly. Such bonds may bear such terms, be issued in such manner, and be subject to such conditions, all as may be authorized by the General Assembly; and the General Assembly may, but shall not be required to, condition the issuance of such bonds upon an election.

§ 2. Purpose of issuance.

(a) No revenue bonds shall be issued by or on behalf of any governmental unit if the primary purpose of the bonds is to loan the proceeds of the bonds, or to lease or sell the facilities financed with the proceeds of the bonds, to one or more private business users for shopping centers or other establishments engaged in the sale of food or goods at retail.

(b) No revenue bonds shall be issued by or on behalf of any governmental unit without the consent of a majority of the qualified electors voting on the question at an election held in accordance with state law if the primary purpose of the bonds is to loan the proceeds of the bonds, or to lease or sell the facilities financed with the proceeds of the bonds, to one or more private business users for hotels or motels, rental or professional office buildings, or facilities for recreation or entertainment.

§ 3. Definitions.

(a) The term "revenue bonds" as used herein shall mean all bonds, notes, certificates or other instruments or evidences of indebtedness the repayment of which is secured by rents, user fees, charges, or other revenues (other than assessments for local improvements and taxes) derived from the project or improvements financed in whole or in part by such bonds, notes, certificates or other instruments or evidences of indebtedness, from the operations of any governmental unit, or from any other special fund or source other than assessments for local improvements and taxes.

(b) The term "governmental unit" as used herein shall mean the State of Arkansas; any county, municipality, or other political subdivision of the State of Arkansas; any special assessment or taxing district established under the laws of the State of Arkansas; and any agency, board, commission, or instrumentality of any of the foregoing.

§ 4. Authority exclusive — Interest — Initiative and referendum.

This amendment shall be the sole authority required for the authorization, issuance, sale, execution and delivery of revenue bonds authorized hereby; provided, however, that the rate of interest on revenue bonds shall not exceed the maximum authorized by Amendment No. 60 to the Constitution of the State of Arkansas or any similar provision

hereafter adopted. Nothing herein shall be construed to impair the initiative and referendum powers reserved to the people under Amendment No. 7 to the Constitution of the State of Arkansas.

AMEND. 66. JUDICIAL DISCIPLINE AND DISABILITY COMMISSION.

(a) **COMMISSION:** Under the judicial power of the State, a Judicial Discipline and Disability Commission is established and shall be comprised of nine persons: three justices or judges, appointed by the Supreme Court; three licensed attorneys in good standing who are not justices or judges, one appointed by the Attorney General, one by the President of the Senate, and one by the Speaker of the House; and three members appointed by the Governor. The members appointed by the Governor shall not be justices or judges, retired justices or judges, or attorneys. Alternate members shall be selected and vacancies filled in the same manner.

(b) **DISCIPLINE, SUSPENSION, LEAVE, AND REMOVAL:** The Commission may initiate, and shall receive and investigate, complaints concerning misconduct of all justices and judges, and requests and suggestions for leave or involuntary disability retirement. Any judge or justice may voluntarily request that the Commission recommend suspension because of pending disciplinary action or leave because of a mental or physical disability. Grounds for sanctions imposed by the Commission or recommendations made by the Commission shall be violations of the professional and ethical standards governing judicial officers, conviction of a felony, or physical or mental disability that prevents the proper performance of judicial duties. Grounds for suspension, leave, or removal from office shall be determined by legislative enactment.

(c) **DISCIPLINE:** If, after notice and hearing, the Commission by majority vote of the membership determines that grounds exist for the discipline of a judge or justice, it may reprimand or censure the judge or justice, who may appeal to the Supreme Court. The Commission may, if it determines that grounds exist, after notice and hearing, and by majority vote of the membership, recommend to the Supreme Court that a judge or justice be suspended, with or without pay, or be removed, and the Supreme court, en banc, may take such action. Under this amendment, a judge who also has executive or legislative responsibilities shall be suspended or removed only from judicial duties. In any hearing involving a Supreme Court justice, all Supreme Court justices shall be disqualified from participation.

(d) **LEAVE AND RETIREMENT:** If, after notice and hearing, the Commission by majority vote of the membership determines that a judge or justice is unable because of physical or mental disability to perform the duties of office, the Commission may recommend to the Supreme Court that the judge or justice be granted leave with pay or be retired, and the Supreme Court, en banc, may take such action. A judge or justice retired by the Supreme Court shall be considered to have retired voluntarily as provided by law.

(e) **VACANCIES:** Vacancies created by suspension, the granting of leave or the removal of a judge or justice, or vacancies created by disqualification of justices, shall be filled as provided by law.

(f) **RULES:** The Supreme Court shall make procedural rules implementing this amendment and setting the length of terms on the Commission.

(g) **CUMULATIVE NATURE:** This amendment is alternative to, and cumulative with, impeachment and address authorized by this Constitution.

Publisher's Notes. This amendment was proposed by Senate Joint Resolution 5 (see Acts 1987, p. 2880) and was adopted at the 1988 general election by a vote of 431,864 for and 286,699 against.

Cross References. Judicial Discipline and Disability Commission, § 16-10-401 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

Brill, The Arkansas Code of Judicial Conduct, 35 Ark. L. Rev. 247.

UALR L.J. Averill, Observations on the Wyoming Experience with Merit Selection of Judges: A Model for Arkansas, 17 UALR L.J. 281.

CASE NOTES

Authority of Courts.

The provision of Rule 12F of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, which provides that the Supreme Court may bring before it any action or failure to act on the part of the commission with respect to a case before the commission, has to do with reviewing the commissioner's actions in deciding the cases before it, and it is not indicative of a general supervisory power in the Supreme Court. *Commission on Judicial Discipline & Disability v. Digby*, 303 Ark. 24, 792 S.W.2d 594 (1990).

Circuit court, and not the Supreme Court, has authority to entertain the declaratory judgment action against the Commission on Judicial Discipline and Disability. *Commission on Judicial Discipline & Disability v. Digby*, 303 Ark. 24, 792 S.W.2d 594 (1990).

Cited: *In re Switzer*, 303 Ark. 288, 796 S.W.2d 341 (1990); *In re Badami*, 309 Ark. 511, 831 S.W.2d 905 (1992); *Griffen v. Ark. Judicial Discipline & Disability Comm'n*, 266 F. Supp. 2d 898 (E.D. Ark. 2003).

AMEND. 67. JURISDICTION OF MATTERS RELATING TO JUVENILES AND BASTARDY.

The General Assembly shall define jurisdiction of matters relating to juveniles (persons under eighteen (18) years of age) and matters relating to bastardy and may confer such jurisdiction upon chancery, circuit or probate courts, or upon separate divisions of such courts, or may establish separate juvenile courts upon which such jurisdiction may be conferred, and shall transfer to such courts the jurisdiction over bastardy and juvenile matters now vested in county courts by Section 28 of Article 7 of this Constitution.

Publisher's Notes. This amendment was proposed by Senate Joint Resolution 1 (see Acts 1987, p. 2878) and was adopted at the 1988 general election by a vote of 439,179 for and 258,278 against.

Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitu-

tion and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts ...".

Cross References. Revision of Ark. Const., Art. 7, Judicial Department., Ark. Const. Amend. 80.

Effective Dates. Ark. Const. Amend. 67: effective January 1, 1989.

RESEARCH REFERENCES

Ark. L. Rev. Killenbeck, Nothing That We Can Do? Or, Much Ado About Nothing? Some Thoughts on Bates v. Bates, Equity,

and Domestic Abuse in Arkansas, 43 Ark. L. Rev. 779.

CASE NOTES

Jurisdiction.

It is within the power of the legislature to transfer the jurisdiction of matters concerning juveniles in need of supervision and dependent-neglected juveniles to the probate court of each county. Hutton v.

Savage, 298 Ark. 256, 769 S.W.2d 394 (1989).

Cited: Arkansas Dep't of Human Servs. v. Clark, 304 Ark. 403, 802 S.W.2d 461 (1991).

AMEND. 68. ABORTION.

Publisher's Notes. This amendment has been declared unconstitutional and unenforceable. See Little Rock Family Planning Services v. Dalton, 860 F.Supp.

609 (E.D. Ark. 1994) and Unborn Child Amendment Committee v. Ward, 318 Ark. 165, 883 S.W.2d 817 (1994).

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, 49 Ark. L. Rev. 419.

CASE NOTES

ANALYSIS

Constitutionality.
Enforcement enjoined.
Enforcement not enjoined.
Medicaid.
Severability.

Constitutionality.

This amendment violates the Supremacy Clause because it is in conflict with federal law. Little Rock Family Planning Servs. v. Dalton, 860 F. Supp. 609 (E.D. Ark. 1994), aff'd, 60 F.3d 497 (8th Cir. 1995), cert. denied, 516 U.S. 1074, 116 S. Ct. 777, 133 L. Ed. 2d 728 (1996), rev'd on

other grounds, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

On July 25, 1994, the United States District Court entered a judgment and a memorandum opinion finding that this amendment was inconsistent with the Federal Hyde Amendment (Pub. L. No. 103-112, § 509 (1993)) and therefore violates the Supremacy Clause; the enforcement of this amendment is enjoined in its entirety for so long as the State of Arkansas accepts federal funds pursuant to the Medicaid Act. Unborn Child Amendment Comm. v. Ward, 318 Ark. 165, 883 S.W.2d 817 (1994).

Enforcement Enjoined.

Until such time as the federal court's 1994 decision is reversed by the appropriate appellate court, the permanent injunction issued by the federal district court will be binding on the State of Arkansas and its instrumentalities, including the University of Arkansas for Medical Sciences (UAMS). *Unborn Child Amendment Comm. v. Ward*, 318 Ark. 165, 883 S.W.2d 817 (1994).

Enforcement Not Enjoined.

This amendment is to be enjoined only to the extent that it imposes obligations inconsistent with federal law. *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

Medicaid.

Because this amendment was challenged insofar as it conflicted with 42 U.S.C. § 1396 et seq., it was improper to enjoin its application to funding that did not involve the Medicaid program. *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

With regard to Medicaid patients in situations involving rape or incest, this Amendment must give way to the Hyde Amendment to Title XIX as long as Arkansas participates in the Medicaid program and the current version of the Hyde Amendment remains in effect. *Unborn Child Amendment Comm. v. Ward*, 328 Ark. 454, 943 S.W.2d 591 (1997).

Severability.

The banning by Ark. Const. Amend. 68, § 1, of the great majority of public funding for abortions operates as the core provision, Ark. Const. Amend. 68, § 2 is a general public policy statement and philosophical foundation for Ark. Const. Amend. 68, § 1, and Ark. Const. Amend. 68, § 3 is merely a descriptive statement; this amendment does not contain several independent parts, so that after Ark. Const. Amend. 68, § 1 is stricken, the rest cannot remain. *Little Rock Family Planning Servs. v. Dalton*, 860 F. Supp. 609 (E.D. Ark. 1994), *aff'd*, 60 F.3d 497 (8th Cir. 1995), *cert. denied*, 516 U.S. 1074, 116 S. Ct. 777, 133 L. Ed. 2d 728 (1996), *rev'd* on other grounds, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

Ark. Const. Amend. 55, §§ 2 and 3 have no function independent of Ark. Const. Amend. 55, § 1 and no practical working purposes; these two sections are mutually connected with and dependent on Ark. Const. Amend. 55, § 1 and would be without operative effect if allowed to stand by themselves. *Little Rock Family Planning Servs. v. Dalton*, 60 F.3d 497 (8th Cir. 1995), *cert. denied*, 516 U.S. 1074, 116 S. Ct. 777, 133 L. Ed. 2d 728 (1996), *rev'd* on other grounds, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

Cited: *Chatelain v. Kelley*, 322 Ark. 517, 910 S.W.2d 215 (1995); *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

§ 1. Public funding.

No public funds will be used to pay for any abortion, except to save the mother's life.

Publisher's Notes. This amendment has been declared unconstitutional and unenforceable. See *Little Rock Family Planning Services v. Dalton*, 860 F.Supp.

609 (E.D. Ark. 1994) and *Unborn Child Amendment Committee v. Ward*, 318 Ark. 165, 883 S.W.2d 817 (1994).

RESEARCH REFERENCES

UALR L.J. Note, Family Law — Child Custody — A Cryopreserved In Vitro Em-

bryo Is a "Child" for Domestic Relations Purposes, 13 UALR L.J. 95.

CASE NOTES

ANALYSIS

Constitutionality.

In general.

Construction.

Financing.

Constitutionality.

This section is invalid and its enforcement is enjoined. *Little Rock Family Planning Servs. v. Dalton*, 860 F. Supp. 609 (E.D. Ark. 1994), *aff'd*, 60 F.3d 497 (8th Cir. 1995), *cert. denied*, 516 U.S. 1074, 116 S. Ct. 777, 133 L. Ed. 2d 728 (1996), *rev'd* on other grounds, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

This section has been preempted by the Hyde Amendment with respect to Medicaid expenditures in cases of rape and incest. *Hodges v. Huckabee*, 338 Ark. 454, 995 S.W.2d 341 (1999).

In General.

To follow the federal Hyde Amendment, the state must establish two additional classes of funding under this section for rape and incest victims. *Little Rock Family Planning Servs. v. Dalton*, 860 F. Supp. 609 (E.D. Ark. 1994), *aff'd*, 60 F.3d 497 (8th Cir. 1995), *cert. denied*, 516 U.S. 1074, 116 S. Ct. 777, 133 L. Ed. 2d 728 (1996), *rev'd* on other grounds, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

This amendment does not contain self-executing language withdrawing the state from participation in Medicaid rather than accepting federal limitations upon

the scope of Medicaid coverage. *Hodges v. Huckabee*, 338 Ark. 454, 995 S.W.2d 341 (1999).

Construction.

It hardly seems possible that any other language could be used to explain more plainly or unambiguously the purpose or meaning of the phrase "to pay for any abortion"; very simply, in order for any entity to be in violation of this section, the following proof would have to be presented: (1) abortions were performed at the entity that were paid for with public funds; or (2) the entity paid for, with public funds, abortions that were performed elsewhere. *Knowlton v. Ward*, 318 Ark. 867, 889 S.W.2d 721 (1994).

The plain and unambiguous meaning of this section did not prohibit the testing, diagnosis, and counseling to families during the preconceptional, prenatal and postnatal periods performed at a genetics clinic. *Knowlton v. Ward*, 318 Ark. 867, 889 S.W.2d 721 (1994).

Financing.

The trial court did not err in determining that the direct and indirect costs of an abortion could be reasonably calculated and in ordering a public hospital to take all steps reasonably necessary to ensure that its charge covers the calculated costs so that the state does not effectively finance an abortion. *Unborn Child Amendment Comm. v. Ward*, 328 Ark. 454, 943 S.W.2d 591 (1997).

§ 2. Public policy.

The policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.

RESEARCH REFERENCES

Ark. L. Rev. Allowing Fetal Wrongful Death Actions in Arkansas: A Death

Whose Time Has Come?, 44 Ark. L. Rev. 465.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In General.

This section is not a self-executing provision that prohibits the state from engaging in any activity that furthers or advances abortions. *Knowlton v. Ward*, 318 Ark. 867, 889 S.W.2d 721 (1994).

This section merely expresses the public policy of the state, but does not provide

any means by which the policy is to be effectuated; therefore, it cannot be considered a self-executing provision. *Knowlton v. Ward*, 318 Ark. 867, 889 S.W.2d 721 (1994).

Jurisdiction.

Juvenile court was without jurisdiction to enter any order affecting a minor's right to have or not to have an abortion. *Juvenile H. v. Crabtree*, 310 Ark. 208, 833 S.W.2d 766 (1992).

§ 3. Effect of amendment.

This amendment will not affect contraceptives or require an appropriation of public funds.

CASE NOTES

ANALYSIS

Construction.
Severability.

Construction.

This Amendment does not erect a per se bar to abortions performed in a public hospital by a public employee where patients pay for the cost in advance or furnish guarantee of payment by a third-party provider. *Unborn Child Amendment Comm. v. Ward*, 328 Ark. 454, 943 S.W.2d 591 (1997).

Severability.

The banning, by Ark. Const. Amend. 68, § 1, of the great majority of public fund-

ing for abortions operates as the core provision, whereas Ark. Const. Amend. 68, § 2, is a general public policy statement and philosophical foundation for Ark. Const. Amend. 68, § 1, and is merely a descriptive statement; this amendment does not contain several independent parts so that, after Ark. Const. Amend. 68, § 1, is stricken, the rest cannot remain. *Little Rock Family Planning Servs. v. Dalton*, 860 F. Supp. 609 (E.D. Ark. 1994), *aff'd*, 60 F.3d 497 (8th Cir. 1995), *cert. denied*, 516 U.S. 1074, 116 S. Ct. 777, 133 L. Ed. 2d 728 (1996), *rev'd on other grounds*, 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

AMEND. 69. REPEAL OF AMENDMENT 44 (PROTECTION OF STATES' RIGHTS).

Publisher's Notes. This amendment repealed Ark. Const. Amend. 44. The amendment was proposed by H.J.R. 1003

of 1989 and was adopted at the Nov. 6, 1990, general election by a vote of 273,527 for and 263,261 against.

AMEND. 70. EXECUTIVE DEPARTMENT AND GENERAL ASSEMBLY SALARIES — RESTRICTIONS ON EXPENSE REIMBURSEMENTS.

Publisher's Notes. This amendment was proposed by H.J.R. 1018 and was

adopted at the 1992 general election by a vote of 464,901 for and 305,161 against.

§ 1. Executive Department and General Assembly — Salaries — Restrictions on reimbursements.

(a) No official of the Executive Department shall be reimbursed by the State of Arkansas for any expenses except those reasonably connected to their official duties and only if such reimbursement is made for documented expenses actually incurred and from the regular budget appropriated for the official's office. Such restrictions on expense reimbursement are of a general application and also are intended specifically to prohibit the appropriation and use of public relations funds. The annual salaries of the Executive Department, which shall be paid in monthly installments, shall be as follows: the Governor, the sum of \$60,000; the Lieutenant Governor, the sum of \$29,000; the Secretary of State, the sum of \$37,500; the Treasurer of State, the sum of \$37,000; the Attorney General, the sum of \$50,000; the Commissioner of State Lands, the sum of \$37,500; and the Auditor of State, the sum of \$37,500. Except as provided herein, such officials of the Executive Department shall not receive any other income from the State of Arkansas, whether in the form of salaries or expenses.

(b) The members of the General Assembly shall receive as their annual salary the sum of \$12,500, except the President Pro Tempore of the Senate and the Speaker of the House of Representatives, who shall each receive the sum of \$14,000 annually, with such salaries to be payable in equal monthly installments. Except as provided herein, no member of the General Assembly shall receive any other income for service in the General Assembly, whether in the form of salaries or expenses, including, but not limited to, public relations funds. Provided further, that no member of the General Assembly shall be entitled to per diem unless authorized by law, or to reimbursement for expenses or mileage unless authorized by law, documented, and reasonably related to their official duties.

§ 2. Additional Constitutional amendments authorized.

In addition to the three amendments to the Constitution allowed pursuant to Article 19, § 22, either branch of the General Assembly at a regular session thereof may propose an amendment to the Constitution to change the salaries for the offices of Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer of State, Commissioner of State Lands, and Auditor of State and for members of the General Assembly. If the same be agreed to by a majority of all members elected to each house, such proposed amendment shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county, where a newspaper is published, for six months immediately preceding the next general election for Senators and Representatives, at which time the same shall be submitted to the electors of the State for approval or rejection. If a majority of the electors voting at such election adopt the amendment the same shall become a part of this Constitution. Only one amendment to the Constitution may be referred pursuant to this section.

Cross References. Constitutional amendments, Art. Const., Art. 19, § 22.

§ 3. Salary adjustments.

The salaries of the Executive Department officials and members of the General Assembly provided for in Section 1 or 2 of this amendment or adjusted pursuant to this section may be increased annually through subsequent appropriations by the General Assembly by an amount not to exceed the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor, for the two years immediately preceding the year of the salary appropriation.

§ 4. Effective date.

The provisions of this amendment shall be effective on January 1, 1993.

§ 5. Repeal of Amendment 56, Sections 2 and 3.

Section 2 and Section 3 of Amendment 56 to the Arkansas Constitution are hereby repealed.

AMEND. 71. PERSONAL PROPERTY TAXES.

Publisher's Notes. This amendment at the 1992 general election by a vote of 578, 609 for and 235, 932 against.
was proposed by S.J.R. 8 and was adopted

§ 1. Exemption from ad valorem taxes.

Items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use, shall be exempt from all ad valorem taxes levied by any city, county, school district, or other taxing unit in this state.

§ 2. Motor vehicles — Procedures for assessment and collection.

In addition to the method established by law for assessing and collecting real and personal property taxes, the General Assembly may establish special procedures, in lieu thereof, for the assessment and collection of annual personal property taxes on motor vehicles, owned by individuals, at the time of issuance or renewal of the registration and the license thereof. Personal property taxes collected on motor vehicles under such procedures shall be based on the assessed value of the vehicles determined at the time the tax is paid, computed at the rate of personal property taxes levied during the preceding November, in the manner provided by law, in the taxing units in which the owner of the motor vehicle resides, or in which the motor vehicle is regularly located and assessed, and the taxpayer shall not be required to pay ad valorem

taxes upon such motor vehicle based on the assessment for the previous year. In no event may more than one year's personal property taxes be collected on the same vehicle in the same year. Personal property taxes collected on motor vehicles under such procedures shall be remitted to the counties in which due, for distribution, as revenues of the year in which collected, to the respective taxing units in the manner provided by law.

§ 3. Supersession of Article 16, Section 5.

The provisions of this amendment shall be in lieu of those provisions of Article 16, Section 5 of the Constitution of the State of Arkansas relating to the assessment and taxation of tangible personal property.

§ 4. Effective date.

This amendment shall be in effect from and after January 1, 1993.

AMEND. 72. CITY AND COUNTY LIBRARY AMENDMENT (CONST. AMENDS. 30 AND 38, §§ 1 AND 3, AMENDED, CONST. AMENDS. 30 AND 38, § 5, ADDED).

Publisher's Notes. This amendment amended Ark. Const. Amend. 30, §§ 1, and 3, added Ark. Const. Amend. 30, § 5, amended Ark. Const. Amend. 38, §§ 1, and 3 and added Ark. Const. Amend. 38, § 5. The amendments to those sections are incorporated within those sections.

The amendment was proposed by H.J.R. 1006 and was adopted at the 1992 general election by a vote of 471,325 for and 325,160 against.

Cross References. House of Representatives, Ark. Const., Art. 5, § 2.

AMEND. 73. ARKANSAS TERM LIMITATION AMENDMENT.

Preamble: The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people. Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers. Therefore, the people of Arkansas, exercising their reserved powers, herein limit the terms of elected officials.

A.C.R.C. Notes. Acts 1995, No. 1150, § 1, provided: "There is hereby created the "Committee on Amendment 73 Implementation" to be composed of up to seven (7) members of the Senate. The members of the Senate shall be selected by the Senate President Pro Tempore, at least two of which are serving their first term and at least two of which are serving their second term. The members of the committee shall elect a chairman.

"The members of the committee shall be

entitled to per diem and mileage at the same rates as are provided for the members of the joint interim committees and such per diem and mileage shall be paid from funds appropriated for paying per diem and mileage of members of the joint interim committees. The committee is eligible to receive funds for consultant services and other expenses from the Joint Interim Committee Study Expense appropriation under the same restrictions and procedures as joint interim committees.

Staff assistance to the committee is to be provided by the Bureau of Legislative Research as approved by the Executive Committee of the Arkansas Legislative Council.

"The committee shall conduct a study to determine any rule or statutory changes that might be necessary or desirable in order to implement Amendment 73 of the Arkansas Constitution. The committee shall report its recommendations to the Senate on or before January 1, 1997."

Publisher's Notes. This amendment was proposed by initiative petition and approved at the 1992 general election by a vote of 494,326 for and 330,836 against.

Section 3 of this amendment was declared unconstitutional in *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994).

Section 3 of this Amendment has been amended by Ark. Const. Amend. 76.

Cross References. Senate, Ark. Const., Art. 5, § 3.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, 48 Ark. L. Rev. 1093.

CASE NOTES

ANALYSIS

Constitutionality.

Construction.

Purpose.

Applicability.

Proposed amendment.

Severability.

Staggered terms.

Constitutionality.

The omission of the enacting clause was not fatal to this amendment because Ark. Const. Amend. 7 makes no requirement for an enacting clause for statewide initiated petitions to amend the Arkansas Constitution. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Sections 1 and 2 of this amendment do not violate U.S. Const. Amends. 1 and 14. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

The qualification clauses fix the sole requirements for congressional service, which is not a power left to the states under U.S. Const. Amend. 10; the attempt of Ark. Const. Amend. 73, § 3, to add an additional criterion based on length of service is in direct conflict with the qualification clauses, and, therefore, Ark. Const. Amend. 73, § 3, is stricken from this amendment. *United States Term*

Limits, Inc. v. Hill, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

This amendment is an indirect attempt to accomplish what the federal constitution prohibits Arkansas from accomplishing directly since the intent behind this amendment is to prevent the election of incumbents and, thus, it violates the federal constitution. *United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Construction.

This amendment did not repeal the two-year term provision of Ark. Const., Art. 8, as amended. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

Purpose.

The intent and the effect of this amendment are to disqualify congressional incumbents from further service. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Applicability.

This amendment is vague and ambiguous on the point of when to begin counting terms; interpreting it to apply prospectively, only periods of service commencing on or after January 1, 1993, will be counted as a term for limitation

purposes under this amendment. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Proposed Amendment.

Proposed amendment regarding congressional term limits was procedural in nature, purporting to empower the electorate with an indirect and prohibited means to propose an amendment to the United States Constitution; such a procedure is not encompassed within the initiative powers reserved to the people of this state in Ark. Const. Amend. 7. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), *cert. denied*, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

Severability.

Sections 1 and 2 of this amendment are severable and valid. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

A reading of Ark. Const. Amend. 73, §§ 1, 2, and 3, shows that they are grammatically independent and functionally independent; although what the people voted for in adopting this amendment was a theme or concept — the limitation of service terms for persons in public office — the fact that one category of persons is eliminated from that adopted amendment does not mean that the voters did not intend it to apply to the remaining two categories, and the striking of Ark. Const. Amend. 73, § 3, does not invalidate the rest of this amendment. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872

S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

This amendment would have passed even without the inclusion of Ark. Const. Amend. 73, § 3, in that the majority was voting for a concept — the limitation of public service terms. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Staggered Terms.

The state has a rational basis for preserving the staggered term provisions which have been a part of our constitutions for more than 150 years; there is nothing in the record to suggest there was any intention on the part of the drafters of this amendment or of the voters in adopting it to discriminate against either the candidates or the electorate of any district. The fact that the amendment, when construed in connection with Ark. Const., Art. 8, as amended, will bring about modest and temporary differences in the total time a senator in a particular district may serve compared to senators of some other districts is simply incidental to the combination of constitutional provisions. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

The disadvantages, if any, to voters of a senate district in being deprived of the opportunity to prolong the incumbency of their senator under this amendment will be temporary and incidental to the state's interest in preserving the staggered term provisions of Ark. Const., Art. 8, as amended. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

§ 1. Executive Branch.

(a) The Executive Department of this State shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, all of whom shall keep their offices at the seat of government, and hold their offices for the term of four years, and until their successors are elected and qualified.

(b) No elected officials of the Executive Department of this State may serve in the same office more than two such four year terms.

CASE NOTES

ANALYSIS

Constitutionality.
Severability.

Constitutionality.

This section and Ark. Const. Amend. 73, § 2, do not violate U.S. Const. Amends. 1 and 14. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Inc. v. Thornton, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Severability.

This section and Ark. Const. Amend. 73, § 2, are severable and valid. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

§ 2. Legislative Branch.

(a) The Arkansas House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. No member of the Arkansas House of Representatives may serve more than three such two year terms.

(b) The Arkansas Senate shall consist of members to be chosen every four years by the qualified electors of the several districts. No member of the Arkansas Senate may serve more than two such four year terms.

CASE NOTES

ANALYSIS

Constitutionality.
Severability.
Terms.

Constitutionality.

This section and Ark. Const. Amend. 73, § 1, do not violate U.S. Const. Amends. 1 and 14. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Severability.

This section and Ark. Const. Amend. 73, § 1, are severable and valid. *United States Term Limits, Inc. v. Hill*, 316 Ark.

251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Terms.

This section does not mention a cap on the total number of years a senator may serve but only states explicitly that a senator may not "serve more than two such four year terms"; this amendment does not touch on the subject of staggered terms for senators and the assignment of two year terms by lot for 18 senators after reapportionment as required by Ark. Const., Art. 8, as amended. *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994).

§ 3. Congressional Delegation.

(a) Any person having been elected to three or more terms as a member of the United States House of Representatives from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States House of Representatives from Arkansas.

(b) Any person having been elected to two or more terms as a member of the United States Senate from Arkansas shall not be

certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States Senate from Arkansas.

Publisher's Notes. This section was declared unconstitutional in *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994).

This section has been amended by Ark. Const. Amend. 76.

CASE NOTES

ANALYSIS

Constitutionality.
Severability.

Constitutionality.

The qualification clauses fix the sole requirements for congressional service, which is not a power left to the states under U.S. Const. Amend. 10; the attempt by this section to add an additional criterion based on length of service is in direct conflict with the qualification clauses, and, therefore, this section is stricken from this amendment. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

An additional qualification has been added to congressional eligibility by this section: the list now reads age, nationality, residency, and prior service. Term limitations for congressional representation may well have come of age, but to institute such a change, an amendment to the U.S. Constitution is required, ratified by three-fourths of the states. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

This amendment, which prohibits the name of an otherwise-eligible candidate for Congress from appearing on the gen-

eral election ballot if that candidate has already served three terms in the House of Representatives or two terms in the Senate, violates the federal constitution. *United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Severability.

This amendment would have passed even without the inclusion of this section in that the majority was voting for a concept — the limitation of public service terms. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

A reading of Ark. Const. Amend. 73, §§ 1, 2, and 3, shows that they are grammatically independent and functionally independent; although what the people voted for in adopting this amendment was a theme or concept — the limitation of service terms for persons in public office — the fact that one category of persons is eliminated from that adopted amendment does not mean that the voters did not intend it to apply to the remaining two categories, and the striking of this section does not invalidate the rest of this amendment. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

§ 4. Severability.

The provisions of this Amendment are severable, and if any should be held invalid, the remainder shall stand.

CASE NOTES

ANALYSIS

In general.
Section held severable.

In General.

The presence of a severability clause is a factor to be considered but, by itself, it may not be determinative. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

Section Held Severable.

A reading of Ark. Const. Amend. 73, §§ 1, 2, and 3, shows that they are gram-

matically independent and functionally independent; although what the people voted for in adopting this amendment was a theme or concept — the limitation of service terms for persons in public office — the fact that one category of persons is eliminated from that adopted amendment does not mean that the voters did not intend it to apply to the remaining two categories, and the striking of Ark. Const. Amend. 73, § 3, does not invalidate the rest of this amendment. *United States Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd sub nom. United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

§ 5. Provisions Self-executing.

Provisions of this Amendment shall be self-executing.

§ 6. Application.

(a) This Amendment to the Arkansas Constitution shall take effect and be in operation on January 1, 1993, and its provisions shall be applicable to all person thereafter seeking election to the offices specified in this Amendment.

(b) All laws and constitutional provisions which conflict with this Amendment are hereby repealed to the extent that they conflict with this amendment.

AMEND. 74. SCHOOL TAX — BUDGET — APPROVAL OF TAX RATE (CONST., ART. 14, § 3, AS AMENDED BY CONST. AMEND. 11 AND CONST. AMEND. 40, AMENDED).

Publisher's Notes. This amendment amended Ark. Const., Art. 14, § 3, and is incorporated within. This amendment was proposed by S.J.R. 10 of 1995 and was

adopted at the general election on November 5, 1996, and approved by a vote of 407,719 for and 378,017 against.

AMEND. 75. [ENVIRONMENTAL ENHANCEMENT FUNDS].

Publisher's Notes. This amendment was adopted at the general election on November 5, 1996, and approved by a vote of 405,216 for and 396,932 against.

The bracketed heading was added by the Publisher.

Effective Dates. Ark. Const. Amend. 75, § 5: collection of the tax imposed by this amendment began on July 1, 1997.

§ 1. Statement of purpose.

The people of the State of Arkansas find that fish, wildlife, parks, tourism and natural heritage constitute a major economic and natural resource of the state and they desire to provide additional funds to the Arkansas Game and Fish Commission, the Department of Parks and Tourism, the Department of Heritage and Keep Arkansas Beautiful.

§ 2. [Excise tax levied].

(a) There is hereby levied an additional excise tax of one-eighth of one percent ($\frac{1}{8}$ of 1%) upon all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act (Arkansas Code § 26-52-101 et seq.), and such tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of all other Arkansas gross receipts taxes.

(b) There is hereby levied an additional excise tax of one-eighth of one percent ($\frac{1}{8}$ of 1%) upon all tangible personal property subject to the tax levied by the Arkansas Compensating Tax Act (Arkansas Code § 26-53-101 et seq.), and such tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of Arkansas compensating taxes.

Publisher's Notes. The bracketed section heading was added by the Publisher.

§ 3. Use of proceeds.

(a) Notwithstanding any provision of Amendment 35 or any other provision of the Arkansas Constitution to the contrary, forty-five percent (45%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Game Protection Fund to be used exclusively by the Arkansas Game and Fish Commission, as appropriated by the General Assembly.

(b) Forty-five percent (45%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Department of Parks and Tourism Fund Account to be used by the Department of Parks and Tourism for state park purposes, as appropriated by the General Assembly.

(c) Nine percent (9%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Arkansas Department of Heritage Fund Account to be used exclusively by the Department of Heritage as appropriated by the General Assembly.

(d) One percent (1%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Keep Arkansas Beautiful Fund Account, which is hereby created on the books of the State Treasurer, State Auditor and the Chief

Fiscal Officer of the State, to be used exclusively by Keep Arkansas Beautiful, as appropriated by the General Assembly.

§ 4. [Administrative procedures].

(a) The General Assembly shall provide for the proper administration and enforcement of this amendment by law.

(b) Unless the General Assembly provides another procedure by law, the provisions of the Arkansas Tax Procedure Act, Sections 26-18-101 et seq., shall so far as practicable be applicable to the tax levied by this amendment and the reporting, remitting and enforcement of the tax.

Publisher's Notes. The bracketed section heading was added by the Publisher.

Cross References. Arkansas Tax Procedure Act, § 26-18-101 et seq.

AMEND. 76. THE CONGRESSIONAL TERM LIMITS AMENDMENT OF 1996 (CONST. AMEND. 73, § 3, AMENDED).

Publisher's Notes. This amendment has been declared unconstitutional by the Arkansas Supreme Court.

This amendment was adopted at the general election on November 5, 1996, and approved by a vote of 448,938 for and 284,499 against.

This amendment contained a preamble which read: "Whereas career politicians dominating Congress have a conflict of interest that prevents them from enacting meaningful term limits and making Congress what the founders intended, the branch of government most responsive to the electorate; and

"Whereas career politicians, while refusing to heed the desire of the people for meaningful term limits, amassed a nearly five trillion dollar national debt by not only voting year after year to spend far more than they have taken in, but also by voting to increase dramatically their own pay, and also providing lavish pensions from themselves and granting themselves numerous other privileges at the expense of the people; and

"Whereas such irresponsible actions on the part of career politicians have mortgaged the future of not only every American citizen, but also their children and grandchildren; and

"Whereas the abuse of power, the corruption, and the appearance of corruption brought about by political careerism is ultimately destructive to representative government by making Congress increasingly distant from the people; and

"Whereas the President of the United States is limited to two terms in office by the 22nd Amendment to the United States Constitution, and governors in forty (40) states are limited by those states' laws to two terms or less; and

"Whereas voters have established term limits for more than 2,000 state legislators, as well as more than 17,000 local officials across the nation, including state legislators and statewide elective officeholders in Arkansas; and

"Whereas in 1992, the people of the State of Arkansas enacted, by an overwhelming majority, an amendment to the State Constitution limiting service in the United States House of Representatives to three terms and in the United States Senate to two terms, and which state-imposed Congressional Term Limits were ruled unconstitutional by the United States Supreme Court; and

"Whereas the United States Congress has ignored the desire of the people for meaningful term limits by refusing to submit to the states for ratification and amendment instituting Congressional Term Limits, and by proposing exceedingly long limits for its own members; and

"Whereas it is the people themselves, not the United States Congress, who have in the past by majority vote, and should in the future set limits for the terms of Congressional offices; and

"Whereas the people have a sovereign right and a compelling interest in the creation and preservation of a citizen Con-

gress that will more effectively protect the freedom and prosperity of the people, which interest and right may not be as effectively served in any way other than that proposed by this amendment to the Arkansas State Constitution; and

“Whereas with foresight and wisdom our founders, under Article V of the United States Constitution, did provide the people with a procedure by which to overcome Congressional self-interest, by which procedure the people of the several states may call a convention to propose amendments to the United States Constitution when two-thirds or thirty-four (34)

states expressly call for a convention; and “Whereas amendments proposed by such a convention would become a part of the United States Constitution upon the ratification of three-fourths of the states (38); and

“Whereas the people of the State of Arkansas desire to amend the United States Constitution to establish term limits on Congress to ensure representation in Congress by true citizen lawmakers;

“THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS.”

§ 1. Congressional Delegation (Const. Amend. 73, § 3 amended).

Section 3 of Amendment 73 to the Arkansas Constitution is hereby amended to add to the current language the following subsections:

(c) The foregoing provisions in sections (a) and (b) shall be revived upon passage of appropriate federal laws.

(d) It is the official position of the people of the State of Arkansas that all of our elected officials should vote to enact, by amendment to the United States Constitution, term limits for members of the United States Congress that are not longer than: three (3) two-year terms in the United States House of Representatives, nor two (2) six-year terms in the United States Senate, respectively.

(e) It is the will of the people of the State of Arkansas that the following amendment be added to the United States Constitution:

“Congressional Term Limits Amendment

“Section A. No person shall serve in the office of United States Representative for more than three terms, but upon ratification of the Congressional Term Limits Amendment no person who has held the office of United States Representative or who then holds the office shall serve for more than two additional terms.

“Section B. No person shall serve in the office of United States Senator for more than two terms, but upon ratification of the Congressional Term Limits Amendment no person who has held the office of United States Senator or who then holds the office shall serve more than one additional term.

“Section C. This article shall have no time limit within which it must be ratified by the legislatures of three-fourths of the several states.[”]

(f)(1) As provided in this subsection, and in subsections (h) and (j) of this section, at each primary, special, and general election for the office of United States Representative, United States Senator, or any state legislator, the ballot shall inform voters regarding any incumbent and non-incumbent candidate’s failure to support “The Congressional Term Limits Amendment” proposed above.

(g) Each member of the Arkansas Delegation to the United States Congress is hereby instructed to use all of the powers of the Congress-

sional office to pass the Congressional Term Limits Amendment set forth in subsection (e) above.

(h) All primary, general, and special election ballots shall have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any United States Representative or United States Senator who:

(1) Failed to vote in favor of the Congressional Term Limits Amendment proposed in subsection (e) when brought to any vote;

(2) Failed to second the Congressional Term Limits Amendment proposed in subsection (e) if it lacked for a second before any proceeding of the legislative body;

(3) Failed to propose or otherwise bring to a vote of the full legislative body the Congressional Term Limits Amendment proposed in subsection (e) above if it otherwise lacked a legislator who so proposed or brought to a vote of the full legislative body the Congressional Term Limits Amendment proposed in subsection (e) above; or

(4) Failed to vote in favor of discharging the Congressional Term Limits Amendment proposed in subsection (e) before any committee or subcommittee upon which the Legislator served in the respective legislative body; or

(5) Failed to vote against or reject any attempt to delay, table, or otherwise prevent a vote by the full legislative body on the Congressional Term Limits Amendment set forth in subsection (e); or

(6) Failed to vote against any term limits proposal with terms longer than those set forth in the Congressional Term Limits Amendment proposed in subsection (e); or

(7) Sponsored or co-sponsored any proposed constitutional amendment or law that proposes term limits longer than those in the Congressional Term Limits Amendment set forth in subsection (e); or

(8) Failed to ensure that all legislative votes on Congressional Term Limits were recorded and made available to the public.

(i) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" shall not appear adjacent to the names of candidates for Congress if the Congressional Term Limits Amendment set forth in subsection (e) is before the states for ratification or has become a part of the United States Constitution.

(j) Notwithstanding any other provision of Arkansas law:

(1) A non-incumbent candidate for the office of United States Representative, United States Senator, State Representative, or State Senator, shall be permitted to sign a "Term Limits Pledge" each time the non-incumbent files as a candidate for such an office. A candidate who declines to sign the "Term Limits Pledge" shall have "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed adjacent to the candidate's name on the election ballot;

(2) Each time a non-incumbent candidate for United States Senator, United States Representative, State Senator, or State Representative files for candidacy for those offices, the candidate shall be offered the "Term Limits Pledge" until the United States Constitution has been

amended to limit United States Senators to two terms in office and United States Representative to three terms in office;

(3) The "Term Limits Pledge" that each non-incumbent candidate for state and federal legislative offices shall be offered is as follows:

"I support Congressional Term Limits and pledge to use all of my legislative powers to enact the proposed Congressional Term Limits Amendment set forth in the United States Congressional Term Limits Amendment of 1996. If elected, I pledge to act and to vote in such a way that the information 'DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS' will not appear next to my name."

The pledge form will provide a space for the signature of the candidate and the date of the signature.

(k) The House of Representatives of the State of Arkansas, and the Arkansas Senate, due to the desire of the people of the State of Arkansas to establish term limits for the Congress of the United States, are hereby instructed to make the following application to the United States Congress, pursuant to their powers under Article V of the United States Constitution, to wit:

"We, the people and the legislature of the State of Arkansas, due to our desire to establish term limits on the members of the Congress of the United States, hereby make application to the United States Congress, pursuant to our power under Article V of the United States Constitution, to call a convention for proposing amendments to the Constitution."

(l) Each state legislator is hereby instructed to use all powers delegated to each legislator to pass the Article V application to the United States Congress set forth in subsection (k) above, and to ratify, if proposed, the Congressional Term Limits Amendment set forth above.

(m) Notwithstanding any other provision of Arkansas Law:

(1) All primary, general, and special election ballots shall have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any State Senator or State Representative who:

(A) Failed to vote in favor of the application set forth in subsection (k) above when brought to a vote; or

(B) Failed to second the application set forth in subsection (k) above if it lacked a second; or

(C) Failed to vote in favor of all votes bringing the application set forth in subsection (k) above before any committee or subcommittee upon which the legislator served; or

(D) Failed to propose or otherwise bring to a vote of the full legislative body the application set forth in subsection (k) if it otherwise lacked a legislator who so proposed or brought to a vote of the full legislative body the application set forth above; or

(E) Failed to vote against any attempt to delay, table, or otherwise prevent a vote by the full legislative body on the application set forth in subsection (k) above; or

(F) Failed in any way to ensure that all votes on the application set forth in subsection (k) were recorded and made available to the public; or

(G) Failed to vote against any change, addition, or modification to the application set forth in subsection (k) above; or

(H) Failed to attend a hearing, session, or vote of the legislative body concerning any aspect of consideration of the proposals in subsection (e) and subsection (k) above, where such failure to attend resulted in any failure to obtain a quorum sufficient to conduct business; or

(I) Failed to move for, second, or vote in favor of a roll-call vote on any aspect of consideration of the proposals in subsection (e) and subsection (k) above, where such failure resulted in the defeat of any aspect of subsection (e) and subsection (k) above, without recording the votes of individual legislators to be held accountable at a later time.

(J) Failed to vote against any effort to rescind the application.

(K) Failed to vote in favor of the amendment set forth in subsection (e) above, when the amendment was sent to the states for ratification; or

(L) Failed to vote against any term limits amendment with terms longer than the limits set forth in the proposed amendment in subsection (e) above, when such an amendment is sent [sic] to the states for ratification.

(2) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" as required by any of subsection (1)(A) through (1)(J) shall not appear adjacent to the names of the candidates for the state legislature if the State of Arkansas has made application to Congress for a convention for proposing amendments to the United States Constitution pursuant to this amendment and such application is currently effective, has not been withdrawn, and has not expired.

(3) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" as required by either of subsections (1)(K) or (1)(L) shall not appear adjacent to the names of the candidates for the state legislature if: The Congressional Term Limits Amendment set forth above has been submitted to the states for ratification and ratified by the Arkansas Legislature; or the Congressional Term Limits Amendment set forth and proposed in subsection (e) has become a part of the United States Constitution.

(n)(1) The Secretary of State of the State of Arkansas shall be responsible for making an accurate determination as to whether a candidate for state or federal legislative office shall have placed next to the candidate's name on the election ballot the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or the information "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" and for certifying the appropriate indication to the appropriate county clerks and other appropriate voting officials.

(2) The Secretary of State, in accordance with subsection (1) of this subsection, shall be responsible for making an accurate determination from any reliable source.

(3) The Secretary of State shall consider timely submitted public comments prior to making the determination required in subsection (1) of this section.

(4) The Secretary of State, in accordance with subsections (1), (2), and (3) of this subsection shall determine and declare what information, if any, shall appear adjacent to the names of each incumbent state and federal legislator if the incumbent were to be a candidate in the next general election and shall certify such information to the appropriate county clerks and other appropriate voting officials.

In the case of United States Representatives and United States Senators, this determination, declaration, and certification shall be made in a fashion necessary to ensure orderly printing of primary and general election ballots with allowance made for all legal action provided in subsections (5), (6) and (7), below, and shall be based upon each Congressional member's actions during their current term of office and any actions taken in any concluded term, if such action was taken after the determination and declaration was made by the Secretary of State previously.

In the case of incumbent state legislators, this determination and declaration shall be made not later than thirty (30) days after the end of the regular session following each general election, and shall be based upon legislative action in the previous regular session or any action taken in any special session in the previous four (4) years, but in no event upon any actions taken before the adoption of this amendment.

The Secretary of State shall provide official notification to the incumbents by certified mail and to the public by official media statement and legal publication in a newspaper of statewide circulation at least two separate times prior to the election, in accordance with the time frames set forth herein.

(5) The Secretary of State shall determine, declare, and certify what information, if any, shall appear adjacent to the names of non-incumbent candidates for state and federal legislator, not later than five (5) business days after the deadline for filing for the office. The Secretary of State shall provide official notification to the candidate by certified mail and to the public by official media statement and legal publication in a newspaper of statewide circulation at least two separate times prior to the election, in accordance with the time frames set forth herein.

(6) If the Secretary of State makes the determination that the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" OR "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall not be certified for placement on the ballot adjacent to the name of a candidate for senator or representative for state or federal office, any candidate or elector may appeal such decision to the Arkansas

Supreme Court as an original action within five (5) business days after the second official newspaper publication of the determination by the Secretary of State or shall waive any right to appeal such decision. The burden of proof shall be upon the Secretary of State to demonstrate by clear and convincing evidence that the candidate has met the requirements set forth in this act and therefore should not have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(7) If the Secretary of State determines that the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" OR "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall be certified for placement on the ballot adjacent to a candidate's name for a senator or representative for state or federal office, the candidate may appeal such decision to the Arkansas Supreme Court as an original action within five (5) business days after receipt of notification or shall waive any right to appeal such decision. The burden of proof shall be upon the candidate to demonstrate by clear and convincing evidence that the candidate should not have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(o) The Arkansas Supreme Court shall hear the appeal provided for in subsections (n)(6) and (n)(7) of this section, on an expedited basis as the first priority among any Supreme Court case, and shall issue its decision on an expedited basis before any other civil appeals are resolved after submission of the matter to the Arkansas Supreme Court. Failure of the Arkansas Supreme Court to render a timely decision will require the Secretary of State to certify the challenged language for placement on the ballot next to the candidate's name.

(p) At such time as the congressional Term Limits Amendment set forth in subsection (e) has become a part of the United States Constitution, subsections (e) through (o) of this amendment automatically shall be repealed.

(q) Repealer. All laws in conflict with the foregoing are hereby repealed.

(r) Severability. If any portion, clause, or phrase of this Amendment is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected, but shall remain in full force and effect.

Publisher's Notes. The bracketed closing quotation marks at the end of subsection (e) were added by the Publisher.

This Amendment has been declared unconstitutional by the Arkansas Supreme Court.

CASE NOTES

Constitutionality.

This Amendment is nothing more than a coercive attempt to compel the Arkansas General Assembly to do as the alleged majority of the people wish, without any intellectual debate, deliberation, or consideration of whether such action is in the best interest of all the people of this state. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

The intent is clear from the language of this Amendment that the legislators are hereby instructed to do as told and, although this Amendment does not compel such action by the legislature on threat of loss of salary, it is nonetheless binding on the legislators in an extortive manner as failure to heed the amendment's instructions will result in their threatened potential political deaths; the Amendment would virtually tie the hands of the individual members of the General Assembly such that they would no longer be part of a deliberative body acting independently in exercising their individual best judgments on every issue, and, consequently, the measure is an impermissible use of the initiative power reserved to the people of this state in Ark. Const. Amend. 7. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S.

1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

The proposed duties to be given to the Secretary of State are not merely ministerial, rather, they amount to substantive penalties that are equivalent to an officially sanctioned recommendation by the State of Arkansas not to vote for such candidates because they disregarded the instructions and wishes of the voters; if the proposed measure were merely a non-binding attempt to communicate the desire of the people for term limits, then their remedy is to voice their desires at the polls by voting for candidates who share these beliefs. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

This amendment is clearly violative of the provision in U.S. Const., Art. V, that all proposals of amendments to that Constitution must come either from Congress or state legislatures, not from the people; it is an indirect attempt to propose an amendment to the United States Constitution and, as such, violates the narrow, specific grants of authority provided in U.S. Const., Art. V. *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996), cert. denied, 519 U.S. 1149, 117 S. Ct. 1081, 137 L. Ed. 2d 216 (1997).

AMEND. 77. [SPECIAL JUDGES (ARK. CONST. ART 7, §§ 9, 21, 22, REPEALED)].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment was adopted at the November 1998 general election and approved by a vote of 296,137 for and 285,305 against.

Effective Dates. Ark. Const. Amend. 77, § 4, provided: "This amendment becomes effective January 1, 1999."

§ 1. [Repealed.]

Publisher's Notes. This section, concerning Supreme Court Justices, was re-

pealed by Ark. Const. Amend. 80, § 22(F), effective July 1, 2001.

§ 2. [Circuit, chancery, and probate judges].

Circuit, chancery, and probate judges may temporarily exchange circuits by joint order. Any circuit, chancery, or probate judge who

consents may be assigned to another circuit for temporary service under rules prescribed by the Supreme Court.

Publisher's Notes. The bracketed heading was added by the Publisher.

Const., Art. 7, Judicial Department., Ark. Const. Amend. 80.

Cross References. Revision of Ark.

§ 3. [Repeal of Ark. Const., Art. 7, §§ 9, 21, 22].

Article 7, Section 9, 21, and 22 are hereby repealed.

Publisher's Notes. The bracketed heading was added by the Publisher.

AMEND. 78. [CITY AND COUNTY GOVERNMENT REDEVELOPMENT.]

Publisher's Notes. This amendment, from H.J.R. 1016 of 1999, was adopted at the November 2000 general election and approved by a vote of 427,407 for and 355,943 against.

This amendment was designated as Amendment 78 by the Secretary of State, and was known as Amendment No. 1 on the general election ballot for 2000: "The City and County Government Redevelopment Bond and Short Term Financing Amendment." The bracketed heading was added by the Publisher.

Preambles. This amendment contained a preamble which read: "BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-SECOND GENERAL ASSEMBLY OF THE

STATE OF ARKANSAS AND BY THE SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

"That the following is hereby proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Senators and Representatives, if a majority of the electors voting thereon at such election adopt such amendment, the same shall become a part of the Constitution of the State of Arkansas, to wit:"

Effective Dates. Ark. Const., Amend. 78, § 4, provided: "This amendment becomes effective January 1, 2001."

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Constitutional Amendments, 24 UALR L.J. 635.

§ 1. Redevelopment Projects.

(a) Any city or county may form a redevelopment district for the purpose of financing one (1) or more redevelopment projects within the district.

(b) A city or county which has formed a redevelopment district may issue bonds for the purpose of financing capital improvements for redevelopment projects within the district. The bonds may be secured by and be payable from all or a portion of the division of ad valorem taxes in the district provided for in (d) below. The bonds shall not be considered in calculating debt limits for bonds issued pursuant to Article XII, Section 4, of the Arkansas Constitution and shall not be

subject to the provisions of Article XVI, Section 1 of the Arkansas Constitution or Amendments 62 or 65 to the Arkansas Constitution.

(c) For purposes of this section, the term "redevelopment project" means an undertaking for eliminating, or preventing the development or spread of, slums or blighted, deteriorated, or deteriorating areas, for discouraging the loss of commerce, industry, or employment, or for increasing employment, or any combination thereof, as may be defined by the General Assembly.

(d) The General Assembly may provide that the ad valorem taxes levied by any taxing unit, in which is located all or part of an area included in a redevelopment district, may be divided so that all or part of the ad valorem taxes levied against any increase in the assessed value of property in the area obtaining after the effective date of the ordinance approving the redevelopment plan for the district shall be used to pay any indebtedness incurred for the redevelopment project; provided, however, there shall be excluded from the division all ad valorem taxes for debt service approved by voters in a taxing unit prior to the effective date of this amendment.

(e) After the effective date of an ordinance approving the redevelopment plan for the district, no increase in the assessed value of property in a redevelopment district shall be taken into account for purposes of calculating increases in the aggregate value of taxable real and personal property in a taxing unit pursuant to Article XVI, Section 14 of the Arkansas Constitution.

(f) Any provision of the Constitution of the State of Arkansas in conflict with this section is repealed insofar as it is in conflict with this amendment.

(g) The General Assembly shall provide for the implementation of this section by law.

§ 2. [Short-term financing obligations].

(a) For the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one (1) year, municipalities and counties may incur short-term financing obligations maturing over a period of, or having a term, not to exceed five (5) years. Such obligations may bear interest at either:

(1) a fixed rate throughout the term thereof, including a fixed interest rate which is to be determined by reference to an index or other formula, but not to exceed the maximum lawful rate of interest for fixed rate obligations, or

(2) a rate which may vary at such times and under such circumstances as the parties may agree, whether or not the interest rate in fact varies, but not to exceed the maximum lawful rate of interest for variable rate obligations. The maximum lawful rate of interest for fixed rate obligations is the formula rate in effect on the date the obligation is incurred, regardless of when such interest is to begin to accrue. The

maximum lawful rate of interest for variable rate obligations is the formula rate in effect on the date such interest accrues. The aggregate principal amount of short-term financing obligations incurred by a municipality or a county pursuant to this section shall not exceed five percent (5%) of the assessed value of taxable property located within the municipality or two and one half percent (2.5%) of the assessed value of taxable property located within the county, as determined by the last tax assessment completed before the last obligation was incurred by the city or county. The total annual principal and interest payments in each fiscal year on all outstanding obligations of a municipality or a county pursuant to this section shall be charged against and paid from the general revenues for such fiscal year, which may include road fund revenues. Tax revenues earmarked for solid waste disposal purposes may be used to pay printing and other costs associated with bonds issued under this amendment for solid waste disposal purposes.

(b) As used here:

(1) "Short-term financing obligation" means a debt, a note, an installment purchase agreement, a lease, a lease-purchase contract, or any other similar agreement, whether secured or unsecured; provided, that the obligation shall mature over a period of, or have a term, not to exceed five (5) years;

(2) "Formula rate" means that rate of interest which is five percentage points (5%) above the equivalent bond yield of one year United States Treasury Bills offered by the United States Treasury at the last auction during the immediately preceding calendar quarter, calculated by rounding up to the nearest one-fourth of one percentage point (0.25%) (unless the equivalent bond yield is already by a multiple of one-fourth of one percentage point), and announced by the State Bank Commissioner (or such successor official who may be performing substantially the same duties) from information available from the Federal Reserve System of the United States. The calculation of the formula rate shall be made on or before the tenth (10th) day of each calendar quarter. The formula rate so calculated shall be effective on the eleventh (11th) day of the calendar quarter and shall continue in effect until the formula rate for the succeeding calendar quarter shall have been calculated and becomes effective. If, for any reason, the United States ceases to issue one year Treasury Bills, such calculation shall be made using a debt instrument of the United States having substantially the same general character and maturity. The calculation and announcement of the formula rate by the State Bank Commissioner shall be final.

(c) The provisions of this section shall be self-executing.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 3. [Scope of authority to incur debt].

The authority conferred by this amendment shall be in addition to the authority of municipalities and counties to issue bonds and other debt obligations pursuant to Amendments 62, 65, and 72, and other provisions of the Constitution and laws of the state.

Publisher's Notes. The bracketed heading was added by the Publisher.

AMEND. 79. [PROPERTY TAX RELIEF].

Publisher's Notes. This amendment was adopted at the November 2000 general election and approved by a vote of 502,882 for and 306,830 against.

This amendment was designated as Amendment 79 by the Secretary of State and was known as Amendment No. 2 on the general election ballot for 2000: "An amendment to limit the increase in the assessed value of a taxpayer's real property after a countywide reappraisal and to require a property tax credit of at least three hundred dollars (\$300) on homestead property." The bracketed heading was added by the Publisher.

Preambles. This amendment contained a preamble which read: "BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-SEC-

OND GENERAL ASSEMBLY OF THE STATE OF ARKANSAS AND BY THE SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

"That the following is hereby proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at such election, adopt such amendment, the same shall become a part of the Constitution of the State of Arkansas, to wit:"

Effective Dates. Ark. Const., Amend. 79, § 4, provided: "This amendment shall be effective on January 1, 2001."

§ 1. [Assessing value of real property].

(a) After each county-wide reappraisal, as defined by law, and the resulting assessed value of property for ad valorem tax purposes and after each Tax Division appraisal and the resulting assessed value of utility and carrier real property for ad valorem tax purposes, the county assessor, or other official or officials designated by law, shall compare the assessed value of each parcel of real property reappraised or reassessed to the prior year's assessed value. If the assessed value of the parcel increased, then the assessed value of the parcel shall be adjusted pursuant to this section.

(b)(1) If the parcel is not a taxpayer's homestead used as the taxpayer's principal place of residence, then for the first assessment following reappraisal, any increase in the assessed value of the parcel shall be limited to not more than ten percent (10%) of the assessed value of the parcel for the previous year. In each year thereafter the assessed value shall increase by an additional ten percent (10%) of the assessed value of the parcel for the year prior to the first assessment that resulted from reappraisal but shall not exceed the assessed value determined by the reappraisal prior to adjustment under this subsection. For utility and carrier real property, any annual increase in the

assessed value of the parcel shall be limited to not more than ten percent (10%) of the assessed value for the previous year.

(2) This subsection (b) does not apply to newly discovered real property, new construction, or to substantial improvements to real property.

(c)(1) Except as provided in subsection (d), if the parcel is a taxpayer's homestead used as the taxpayer's principal place of residence then for the first assessment following reappraisal, any increase in the assessed value of the parcel shall be limited to not more than five percent (5%) of the assessed value of the parcel for the previous year. In each year thereafter the assessed value shall increase by an additional five percent (5%) of the assessed value of the parcel for the year prior to the first assessment that resulted from reappraisal but shall not exceed the assessed value determined by the reappraisal prior to adjustment under this subsection.

(2) This subsection (c) does not apply to newly discovered real property, new construction, or to substantial improvements to real property.

(d)(1)(A) A homestead used as the taxpayer's principal place of residence purchased or constructed on or after January 1, 2001 by a disabled person or by a person sixty-five (65) years of age or older shall be assessed thereafter based on the lower of the assessed value as of the date of purchase or construction or a later assessed value.

(B) When a person becomes disabled or reaches sixty-five (65) years of age on or after January 1, 2001, that person's homestead used as the taxpayer's principal place of residence shall thereafter be assessed based on the lower of the assessed value on the person's sixty-fifth birthday, on the date the person becomes disabled or a later assessed value.

(C) If a person is disabled or is at least sixty-five (65) years of age and owns a homestead used as the taxpayer's principal place of residence on January 1, 2001, the homestead shall be assessed based on the lower of the assessed value on January 1, 2001 or a later assessed value.

(2) Residing in a nursing home shall not disqualify a person from the benefits of this subsection (d).

(3) In instances of joint ownership, if one of the owners qualifies under this subsection (d), all owners shall receive the benefits of this amendment.

(4) This subsection (d) does not apply to substantial improvements to real property.

(5) For real property that is subject to Section 2 of this Amendment in lieu of January 1, 2001, the applicable date for this subsection (d) shall be January 1 of the year following the completion of the adjustments to assessed value required by Section 2.

§ 2. [Effect of county-wide reappraisal — Public utility and carrier exception].

(a)(1) Section 1 of this Amendment shall not be applicable to a county in which there has been no county-wide reappraisal, as defined by law, and resulting assessed value of property between January 1, 1986 and December 31, 2000. Real property in such a county shall be adjusted according to the provisions of this section.

(2) Upon the completion of the adjustments to assessed value required by this section each taxpayer of that county shall be entitled to apply the provision of Section 1 of this Amendment to the real property owned by them.

(b) The county assessor, or other official or officials designated by law, shall compare the assessed value of each parcel of real property to the prior year's assessed value. If assessed value of the parcel increased, then the assessed value of the parcel for the first assessment resulting from reappraisal shall be adjusted by adding one-third ($\frac{1}{3}$) of the increase to the assessed value of the parcel for the previous year. An additional one-third ($\frac{1}{3}$) of the increase shall be added in each of the next two (2) years. This adjustment procedure shall not apply to public utility and carrier property. Public utility and carrier property shall be adjusted pursuant to Section 1.

(c) No adjustment shall be made for newly discovered real property, new construction, or to substantial improvements to real property.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 3. [Annual state credit].

The General Assembly shall provide by law for an annual state credit against ad valorem property tax on a homestead in an amount of not less than three hundred dollars (\$300). The credit shall not exceed the amount of ad valorem property taxes owed. The credit shall apply beginning for taxes due in calendar year 2001. This section shall be applied in a manner that would not impair a bond holder's interest in ad valorem debt service revenues.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 4. [Income adjustments — Personal property millage rate — Uniform property tax rate requirement — Reassessment — Rollback adjustments].

(a) The General Assembly shall, by law, provide for procedures to be followed with respect to adjusting ad valorem taxes or millage pledged for bonded indebtedness purposes, to assure that the tax or millage levied for bonded indebtedness purposes will, at all times, provide a level of income sufficient to meet the current requirements of all

principal, interest, paying agent fees, reserves, and other requirements of the bond indenture.

(b) The millage rate levied against taxable personal property and utility and regulated carrier property in each taxing unit in the state shall be equal to the millage rate levied against real property in each taxing unit in the state. Personal property millage rates currently not equal to real estate millage rates shall be reduced to the level of the real estate millage rate; except to the extent necessary to provide a level of income sufficient to meet the current requirements of all principal, interest, paying agent fees, reserves, and other requirements of the bond indenture.

(c) The provisions of this section shall not affect or repeal the required uniform rate of ad valorem property tax set forth in Amendment 74.

(d) The General Assembly may, by law, prescribe the method and means for reassessing real property and establish the frequency of reassessment. However, reassessment shall occur at least once every five (5) years.

(e) Rollback adjustments under Article 16, Section 14 shall be determined after the adjustments are made to assessed value under this Amendment.

Publisher's Notes. The bracketed heading was added by the Publisher.

and approval of tax rate, Ark. Const., Amend. 74.

Cross References. School tax, budget

AMEND. 80. [QUALIFICATIONS OF JUSTICES AND JUDGES].

A.C.R.C. Notes. Acts 2001, No. 914, § 1, codified as § 16-10-136, provided: "Qualifications of justices and judges. Restrictions on extrajudicial activities found in Arkansas Constitution, Amendment 80, shall not preclude a justice or judge from: (1) Being a member of the reserve units of any branch of the United States Armed Forces; (2) Being a member of the National Guard; (3) Teaching; (4) Serving on any state or United States boards or commissions which relate to the law for the administration of justice; or (5) Serving in an extrajudicial capacity which is not prohibited by the Arkansas Code of Judicial Conduct."

Publisher's Notes. This amendment was adopted at the November 2000 general election and approved by a vote of 431,137 for and 323,647 against.

This amendment was designated as Amendment 80 by the Secretary of State, and was known as Amendment No. 3 on

the general election ballot for 2000: "An amendment to revise the judicial article of the Arkansas Constitution." The bracketed heading was added by the Publisher.

Preambles. This amendment contained a preamble which read: "BE IT RESOLVED BY THE SENATE OF THE EIGHTY-SECOND GENERAL ASSEMBLY OF THE STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

"That the following is hereby proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Senators and Representatives, if a majority of the electors voting thereon at such election, adopt such amendment, the same shall become a part of the Constitution of the State of Arkansas, to wit:"

RESEARCH REFERENCES

UALR L.J. Municipal Gone District: Jurisdiction in New Court of First Resort, 24 UALR L.J. 277.

Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 UALR L.J. 465.

The Right to Trial by Jury in Arkansas After Merger of Law and Equity, 24 UALR L.J. 649.

A Practitioner's Guide to Arkansas's New Judicial Article, 24 UALR L.J. 715.

CASE NOTES

ANALYSIS

Application.
Judicial power.

Application.

Since this amendment states that circuit courts assume the jurisdiction of chancery courts, circuit courts have only the jurisdiction that chancery courts had prior to the amendment; thus, the trial court erred when it found that it had the jurisdiction to grant injunctive relief to prevent the Arkansas Professional Bailbondsman Licensing Board from holding a hearing on bail bond company's alleged violations due to insufficient notice. Ark. Prof'l Bail Bondsman Licensing

Bd. v. Frawley, 350 Ark. 444, 88 S.W.3d 418 (2002).

Judicial Power.

Defendant's argument that the prohibition of Ark. Sup. Ct. & Ct. App. R. 5-2, prohibiting citation to unpublished opinions, violated his right of due process under Ark. Const. art. II, §§ 8 and 21, was rejected because the federal judicial power clause had never before been construed to limit courts in the manner in which they conduct their business, and the same could be said for Arkansas's judicial article. Weatherford v. State, 352 Ark. 324, 101 S.W.3d 227 (2003).

Cited: Carter v. Four Seasons Funding Corp., 351 Ark. 637, 97 S.W.3d 387 (2003).

§ 1. Judicial power.

The judicial power is vested in the Judicial Department of state government, consisting of a Supreme Court and other courts established by this Constitution.

§ 2. Supreme Court.

(A) The Supreme Court shall be composed of seven Justices, one of whom shall serve as Chief Justice. The Justices of the Supreme Court shall be selected from the State at large.

(B) The Chief Justice shall be selected for that position in the same manner as the other Justices are selected. During any temporary period of absence or incapacity of the Chief Justice, an acting Chief Justice shall be selected by the Court from among the remaining justices.

(C) The concurrence of at least four justices shall be required for a decision in all cases.

(D) The Supreme Court shall have:

(1) Statewide appellate jurisdiction;

(2) Original jurisdiction to issue writs of quo warranto to all persons holding judicial office, and to officers of political corporations when the question involved is the legal existence of such corporations;

(3) Original jurisdiction to answer questions of state law certified by a court of the United States, which may be exercised pursuant to Supreme Court rule;

(4) Original jurisdiction to determine sufficiency of state initiative and referendum petitions and proposed constitutional amendments; and

(5) Only such other original jurisdiction as provided by this Constitution.

(E) The Supreme Court shall have power to issue and determine any and all writs necessary in aid of its jurisdiction and to delegate to its several justices the power to issue such writs.

(F) The Supreme Court shall appoint its clerk and reporter.

(G) The sessions of the Supreme Court shall be held at such times and places as may be adopted by Supreme Court rule.

CASE NOTES

Habeas Corpus.

Prior case law did not preclude the Supreme Court of Arkansas from considering a second petition for habeas corpus relief where defendant's first petition, alleging that the trial court lacked jurisdiction to enter a judgment of conviction against defendant for rape because the crime had occurred in another county, had

been rejected because defendant had not provided an adequate abstract of the proceedings in the trial court; the Court's prior opinion in *McAdams v. Automotive Rentals, Inc.*, 324 Ark. 332, 924 S.W.2d. 464 (1966) was overruled to the extent that it was in conflict with the present decision. *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003).

§ 3. Rules of pleading, practice and procedure.

The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.

§ 4. Superintending control.

The Supreme Court shall exercise general superintending control over all courts of the state and may temporarily assign judges, with their consent, to courts or divisions other than that for which they were elected or appointed. These functions shall be administered by the Chief Justice.

§ 5. Court of Appeals.

There shall be a Court of Appeals which may have divisions thereof as established by Supreme Court rule. The Court of Appeals shall have such appellate jurisdiction as the Supreme Court shall by rule determine and shall be subject to the general superintending control of the Supreme Court. Judges of the Court of Appeals shall have the same qualifications as Justices of the Supreme Court.

§ 6. Circuit courts.

(A) Circuit Courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution.

(B) Subject to the superintending control of the Supreme Court, the Judges of a Circuit Court may divide that Circuit Court into subject matter divisions, and any Circuit Judge within the Circuit may sit in any division.

(C) Circuit Judges may temporarily exchange circuits by joint order. Any Circuit Judge who consents may be assigned to another circuit for temporary service under rules adopted by the Supreme Court.

(D) The Circuit Courts shall hold their sessions in each county at such times and places as are, or may be, prescribed by law.

§ 7. District courts.

(A) District Courts are established as the trial courts of limited jurisdiction as to amount and subject matter, subject to the right of appeal to Circuit Courts for a trial de novo.

(B) The jurisdictional amount and the subject matter of civil cases that may be heard in the District Courts shall be established by Supreme Court rule. District Courts shall have original jurisdiction, concurrent with Circuit Courts, of misdemeanors, and shall also have such other criminal jurisdiction as may be provided pursuant to Section 10 of this Amendment.

(C) There shall be at least one District Court in each county. If there is only one District Court in a county, it shall have county-wide jurisdiction. Fines and penalties received by the district court shall continue to be distributed in the manner provided by current law, unless and until the General Assembly shall establish a new method of distribution.

(D) A District Judge may serve in one or more counties. Subject to the superintending control of the Supreme Court, the Judges of a District Court may divide that District Court into subject matter divisions, and any District Judge within the district may sit in any division.

(E) District Judges may temporarily exchange districts by joint order. Any District Judge who consents may be assigned to another district for temporary service under rules adopted by the Supreme Court.

CASE NOTES

Right to Appeal.

Defendant could appeal his probation revocation from district court to circuit court because his right to appeal from district court to circuit court, under this

section, was not limited to cases in which there was a right to a jury trial. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003).

§ 8. Referees, masters and magistrates.

(A) A Circuit Court Judge may appoint referees or masters, who shall have power to perform such duties of the Circuit Court as may be prescribed by Supreme Court rule.

(B) With the concurrence of a majority of the Circuit Court Judges of the Circuit, a District Court judge may appoint magistrates, who shall be subject to the superintending control of the District Court and shall have power to perform such duties of the District Court as may be prescribed by Supreme Court rule.

§ 9. Annulment or amendment of rules.

Any rules promulgated by the Supreme Court pursuant to Sections 5, 6(B), 7(B), 7(D), or 8 of this Amendment may be annulled or amended, in whole or in part, by a two-thirds ($\frac{2}{3}$) vote of the membership of each house of the General Assembly.

§ 10. Jurisdiction, venue, circuits, districts and number of judges.

The General Assembly shall have the power to establish jurisdiction of all courts and venue of all actions therein, unless otherwise provided in this Constitution, and the power to establish judicial circuits and districts and the number of judges for Circuit Courts and District Courts, provided such circuits or districts are comprised of contiguous territories.

§ 11. Right of appeal.

There shall be a right of appeal to an appellate court from the Circuit Courts and other rights of appeal as may be provided by Supreme Court rule or by law.

§ 12. Temporary disqualification of justices or judges.

No Justice or Judge shall preside or participate in any case in which he or she might be interested in the outcome, in which any party is related to him or her by consanguinity or affinity within such degree as prescribed by law, or in which he or she may have been counsel or have presided in any inferior court.

Cross References. Disqualification from proceedings for lack of impartiality, Ark. Code Jud. Cond. Canon 3(E).

CASE NOTES

Cited: White v. Priest, 348 Ark. 135, 73 949, 123 S. Ct. 381, 154 L. Ed. 2d 295 S.W.3d 572 (2002), cert. denied, 537 U.S. (2002).

§ 13. Assignment of special and retired judges.

(A) If a Supreme Court Justice is disqualified or temporarily unable to serve, the Chief Justice shall certify the fact to the Governor, who within thirty (30) days thereafter shall commission a Special Justice, unless the time is extended by the Chief Justice upon a showing by the

Governor that, in spite of the exercise of diligence, additional time is needed. If the Governor fails to commission a Special Justice within thirty (30) days, or within any extended period granted by the Chief Justice, the Lieutenant Governor shall commission a Special Justice.

(B) If a Judge of the Court of Appeals is disqualified or temporarily unable to serve, the Chief Judge shall certify the fact to the Chief Justice who shall commission a Special Judge.

(C) If a Circuit or District Judge is disqualified or temporarily unable to serve, or if the Chief Justice shall determine there is other need for a Special Judge to be temporarily appointed, a Special Judge may be assigned by the Chief Justice or elected by the bar of that Court, under rules prescribed by the Supreme Court, to serve during the period of temporary disqualification, absence or need.

(D) In naming Special Justices and Judges, the Governor or the Chief Justice may commission, with their consent, retired Justices or Judges, active Circuit or District Judges, or licensed attorneys.

(E) Special and retired Justices and Judges selected and assigned for temporary judicial service shall meet the qualifications of Justices or Judges of the Court to which selected and assigned.

(F) Special and retired judges shall be compensated as provided by law.

CASE NOTES

Cited: *White v. Priest*, 348 Ark. 135, 73 949, 123 S. Ct. 381, 154 L. Ed. 2d 295 S.W.3d 572 (2002), cert. denied, 537 U.S. (2002).

§ 14. Prohibition of practice of law.

Justices and Judges, except District Judges, shall not practice law during their respective terms of office. The General Assembly may, by classification, prohibit District Judges from practicing law.

§ 15. Prohibition of candidacy for non-judicial office.

If a Judge or Justice files as a candidate for non-judicial governmental office, that candidate's judicial office shall immediately become vacant.

§ 16. Qualifications and terms of justices and judges.

(A) Justices of the Supreme Court and Judges of the Court of Appeals shall have been licensed attorneys of this state for at least eight years immediately preceding the date of assuming office. They shall serve eight-year terms.

(B) Circuit Judges shall have been licensed attorneys of this state for at least six years immediately preceding the date of assuming office. They shall serve six-year terms.

(C) District Judges shall have been licensed attorneys of this state for at least four years immediately preceding the date of assuming office. They shall serve four-year terms.

(D) All Justices and Judges shall be qualified electors within the geographical area from which they are chosen, and Circuit and District Judges shall reside within that geographical area at the time of election and during their period of service. A geographical area may include any county contiguous to the county to be served when there are no qualified candidates available in the county to be served.

(E) The General Assembly shall by law determine the amount and method of payment of Justices and Judges. Such salaries and expenses may be increased, but not diminished, during the term for which such Justices or Judges are selected or elected. Salaries of Circuit Judges shall be uniform throughout the state.

(F) Circuit, District, and Appellate Court Judges and Justices shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States, except as authorized by law.

§ 17. Election of circuit and district judges.

(A) Circuit Judges and District Judges shall be elected on a nonpartisan basis by a majority of qualified electors voting for such office within the circuit or district which they serve.

(B) Vacancies in these offices shall be filled as provided by this Constitution.

CASE NOTES

Election.

The Arkansas Constitution's provision for the election of special judges when the regular judge fails to attend, Ark. Const., Art. 7, § 21, which also describes the election procedure for a judge who dis-

qualifies, although referring to the circuit court, is equally applicable to the election of special chancellors and special probate judges. *Daley v. Boroughs*, 310 Ark. 274, 835 S.W.2d 858 (1992).

§ 18. Election of Supreme Court Justices and Court of Appeals Judges.

(A) Supreme Court Justices and Court of Appeals Judges shall be elected on a nonpartisan basis by a majority of qualified electors voting for such office. Provided, however, the General Assembly may refer the issue of merit selection of members of the Supreme Court and the Court of Appeals to a vote of the people at any general election. If the voters approve a merit selection system, the General Assembly shall enact laws to create a judicial nominating commission for the purpose of nominating candidates for merit selection to the Supreme Court and Court of Appeals.

(B) Vacancies in these offices shall be filled by appointment of the Governor, unless the voters provide otherwise in a system of merit selection.

§ 19. Transition provisions, tenure of present justices and judges, and jurisdiction of present courts.

(A) Tenure of Present Justices and Judges.

(1) Justices of the Supreme Court and Judges of the Court of Appeals in office at the time this amendment takes effect shall continue in office until the end of the terms for which they were elected or appointed.

(2) All Circuit, Chancery, and Circuit-Chancery Judges in office at the time this Amendment takes effect shall continue in office as Circuit Judges until the end of the terms for which they were elected or appointed; provided further, the respective jurisdictional responsibilities for matters legal, equitable or juvenile in nature as presently exercised by such Judges shall continue until changed pursuant to law.

(3) Municipal Court Judges in office at the time this Amendment takes effect shall continue in office through December 31, 2004; provided, if a vacancy occurs in an office of a Municipal Judge, that vacancy shall be filled for a term which shall end December 31, 2004.

(B) Jurisdiction of Present Courts.

(1) The Jurisdiction conferred on Circuit Courts established by this Amendment includes all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts including those matters repealed by Section 22 of this Amendment. The geographic circuits and subject matter divisions of these courts existing at the time this Amendment takes effect shall become circuits and divisions of the Circuit Court as herein established until changed pursuant to this Amendment. Circuit Courts shall assume the jurisdiction of Circuit, Chancery, Probate and Juvenile Courts.

(2) District Courts shall have the jurisdiction vested in Municipal Courts, Corporation Courts, Police Courts, Justice of the Peace Courts, and Courts of Common Pleas at the time this Amendment takes effect. District Courts shall assume the jurisdiction of these courts of limited jurisdiction and other jurisdiction conferred in this Amendment on January 1, 2005. City Courts shall continue in existence after the effective date of this Amendment unless such City Court is abolished by the governing body of the city or by appropriate action of the General Assembly. Immediately upon abolition of such City Court, the jurisdiction of the City Court shall vest in the nearest District Court in the county where the city is located.

(C) Continuation of Courts. The Supreme Court provided for in this Amendment shall be a continuation of the Supreme Court now existing. The Court of Appeals shall be regarded as a continuation of the Court of Appeals now existing. All laws and parts of laws relating to the Supreme Court and to the Court of Appeals which are not in conflict or inconsistent with this Amendment shall remain in full force and effect and shall apply to the Supreme Court and Court of Appeals, respectively, established by this Amendment until amended, repealed or superseded by appropriate action of the General Assembly or the Supreme Court pursuant to this Amendment. The Circuit Courts shall

be regarded as a continuation of the Circuit, Chancery, Probate and Juvenile Courts now existing. Effective January 1, 2005, the District Courts shall be regarded as a continuation of the Municipal Courts, Corporation Courts, Police Courts, Justice of the Peace Courts and Courts of Common Pleas now existing. All the papers and records pertaining to these courts shall be transferred accordingly, and no suit or prosecution of any kind or nature shall abate because of any change made by this Amendment. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, decrees, orders, sentences, regulations, causes of action and appeals existing on the effective date of this Amendment shall continue unaffected except as modified in accordance with this Amendment.

Cross References. Penalty for excessive unexcused school absences being revocation of driving privilege, § 6-18-222.

Jurisdiction of circuit courts, § 9-27-306.

Effective Dates. Ark. Const., Amend. 80, § 21, provided: "This amendment shall become effective January 1, 2005."

§ 20. Prosecuting attorneys.

A Prosecuting Attorney shall be elected by the qualified electors of each judicial circuit. Prosecuting Attorneys shall have been licensed attorneys of this state for at least four years immediately preceding the date of assuming office. They shall be qualified electors within the judicial circuit from which they are elected and shall reside within that geographical area at the time of the election and during their period of service. They shall serve four-year terms.

§ 21. Effective date.

This Amendment shall become effective on July, 2001.

Publisher's Notes. The text of this section has been printed exactly as enacted. Based on the effective dates of the

repeals in Ark. Const. Amend. 80, § 22, the apparent intent was to make this Amendment effective July 1, 2001.

§ 22. Repealer.

(A) The following sections of Article 7 of the Constitution of the State of Arkansas are hereby repealed effective July 1, 2001; 1 through 18; 20 through 22; 24; 25; 32; 34; 35; 39; 40; 42; 44; 45 and 50.

(B) Sections 34 and 35 of Article 7 of the Constitution of the State of Arkansas, as amended by Sections 1 and 2 of Amendment 24, are hereby repealed effective July 1, 2001.

(C) Section 43 of Article 7 of the Constitution of the State of Arkansas is hereby repealed effective January 1, 2005.

(D) Section 1 of Amendment 58 of the Constitution of the State of Arkansas is hereby repealed effective July 1, 2001.

(E) Section 1 of Amendment 64 of the Constitution of the State of Arkansas is hereby repealed effective January 1, 2005.

(F) Section 1 of Amendment 77 of the Constitution of the State of Arkansas is hereby repealed effective July 1, 2001.

(G) No other provision of the Constitution of the State of Arkansas shall be repealed by this Amendment unless the provision is in irreconcilable conflict with the provisions of this Amendment.

**AMEND. 81. [PROTECTION OF THE SECRECY OF
INDIVIDUAL VOTES (CONST., AMEND. 50, § 3 REPEALED)].**

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment was proposed by H.J.R. 1004 during the 2001 Regular Session and adopted at the November 2002 general election.

Subsection (b) of Ark. Const., Amend. 81, provided: "Section 3 of Amendment 50 of the Arkansas Constitution is hereby repealed."

Preambles. This amendment contained a preamble which read: "BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-THIRD GENERAL ASSEMBLY OF THE

STATE OF ARKANSAS AND BY THE SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

"That the following is hereby proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at such election, adopt such amendment, the same shall become a part of the Constitution of the State of Arkansas, to wit:"

CONSTITUTION OF THE STATE OF ARKANSAS OF 1836

PREAMBLE

We, the people of the Territory of Arkansas, by our representatives, in convention assembled, at Little Rock, on Monday, the fourth day of January, A.D. 1836, and of the independence of the United States the sixtieth year, having the right of admission into the Union as one of the United States of America, consistent with the Federal Constitution, and by virtue of the treaty of cession by France to the United States of the Province of Louisiana, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free and independent State, by the name and style of "The State of Arkansas," and do ordain and establish the following Constitution for the government thereof:

ARTICLE I

OF BOUNDARIES

We do declare and establish, ratify and confirm the following as the permanent boundaries of said State of Arkansas, that is to say: Beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude; running from thence west with the said parallel of latitude to the St. Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red River, as by acts of Congress and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the Mexican boundary line to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river to the thirty-sixth degree of north latitude, the point of beginning.

ARTICLE II

DECLARATION OF RIGHTS

That the great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE:

§ 1. That all free men, when they form a social compact, are equal and have certain inherent and indefeasible rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

§ 2. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have, at all times, an unqualified right to alter, reform or abolish their government in such manner as they may think proper.

§ 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; that no human authority can, in any case whatever, interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

§ 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

§ 5. That all elections shall be free and equal.

§ 6. That the right of trial by jury shall remain inviolate.

§ 7. That printing presses shall be free to every person, and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

§ 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels the jury shall have the right to determine the law and the facts.

§ 9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and that general warrants, whereby any officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named whose offenses are not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

§ 10. That no free man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any

manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

§ 11. That in all criminal prosecutions the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment a speedy public trial by an impartial jury of the county or district in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

§ 12. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

§ 13. That all penalties shall be reasonable and proportioned to the nature of the offense.

§ 14. That no man shall be put to answer any criminal charge but by presentment, indictment or impeachment.

§ 15. That no conviction shall work corruption of blood or forfeiture of estate.

§ 16. That all prisoners shall be bailable by sufficient securities, unless in capital offenses where the proof is evident or the presumption great. And the privilege of the writ of habeas corpus shall not be suspended unless where, in case of rebellion or invasion, the public safety may require it.

§ 17. That excessive bail shall in no case be required nor excessive fines imposed.

§ 18. That no ex post facto law, or law impairing the obligation of contracts shall ever be made.

§ 19. That perpetuities and monopolies are contrary to the genius of a republic and shall not be allowed, nor shall any hereditary emolument, privileges or honors ever be granted or conferred in this State.

§ 20. That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives and to apply to those invested with the power of the government for redress of grievances or other proper purposes by address or remonstrance.

§ 21. That the free white men of this State shall have a right to keep and to bear arms for their common defense.

§ 22. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

§ 23. The military shall be kept in strict subordination to the civil power.

§ 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and, to guard against any encroachments on the rights herein retained or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained shall be void.

ARTICLE III

OF DEPARTMENTS

§ 1. The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another and those which are judicial to another.

§ 2. No person or collection of persons, being of one of those departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE IV

LEGISLATIVE DEPARTMENT

§ 1. The legislative power of this State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

QUALIFICATION OF ELECTORS

§ 2. Every free white male citizen of the United States who shall have attained the age of twenty-one years and who shall have been a citizen of this State six months shall be deemed a qualified elector, and be entitled to vote in the county or district where he actually resides for each and every office made elective under this State or under the United States. Provided, that no soldier, seaman or marine in the army or navy of the United States shall be entitled to vote at any election within this State.

TIME OF CHOOSING REPRESENTATIVES

§ 3. The House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

QUALIFICATION OF A REPRESENTATIVE

§ 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-five years, who shall not be a free white male citizen of the United States, who shall not have been an inhabitant of this State one year, and who shall not at the time of his election have an actual residence in the county he may be chosen to represent.

QUALIFICATION OF A SENATOR

§ 5. The Senate shall consist of members to be chosen every four years by the qualified electors of the several districts.

§ 6. No person shall be a senator who shall not have attained the age of thirty years, who shall not be a free white male citizen of the United States, who shall not have been an inhabitant of this State one year, and who shall not at the time of his election have an actual residence in the district he may be chosen to represent.

MEETING OF THE GENERAL ASSEMBLY

§ 7. The General Assembly shall meet every two years, on the first Monday of November, at the seat of government, until altered by law.

MODE OF ELECTION AND TIME, AND PRIVILEGE OF ELECTORS

§ 8. All general elections shall be viva voce until otherwise directed by law, and shall commence and be holden every two years on the first Monday in October until altered by law, and the electors, in all cases except in case of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

DUTY OF GOVERNOR

§ 9. The Governor shall issue writs of election to fill such vacancies as shall occur in either house of the General Assembly.

§ 10. No judge of the supreme, circuit or inferior courts of law or equity, secretary of state, attorney for the state, state auditor or treasurer, register or recorder, clerk of any court of record, sheriff,

coroner, member of Congress, nor any other person holding any lucrative office under the United States or this State (militia officers, justices of the peace, postmasters and judges of the county court excepted), shall be eligible to a seat in either house of the General Assembly.

§ 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the General Assembly, nor to any office of profit or trust, until he shall have accounted for and paid over all sums for which he may have been liable.

§ 12. The General Assembly shall exclude from every office of trust or profit, and from the right of suffrage within this State, all persons convicted of bribery, perjury or other infamous crime.

§ 13. Every person who shall have been convicted of directly or indirectly giving or offering any bribe to procure his election or appointment shall be disqualified from holding any office of trust or profit under this State; and any person who shall give, offer any bribe to procure the election or appointment of any person shall, on conviction thereof, be disqualified from being an elector or from holding office of trust or profit under this State.

§ 14. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this State which shall have been created or the emoluments of which shall have been increased during his continuance of office, except to such office as shall be filled by the election of the people.

§ 15. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house shall provide.

§ 16. Each house may determine the rules of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled the second time for the same offense, they shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays upon any question shall be entered on the journal at the desire of any five members.

§ 17. The door of each house when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment any person not a

member who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence during their session; but such imprisonment shall not extend beyond the final adjournment of that session.

§ 18. Bills may originate in either house and be amended or rejected by the other, and every bill shall be read on three different days in each house, unless two-thirds of the house where the same is pending shall dispense with the rules; and every bill having passed both houses shall be signed by the President of the Senate and the Speaker of the House of Representatives.

§ 19. Whenever any officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house, of the General Assembly, the vote shall be taken viva voce and entered on the journal.

§ 20. The senators and representatives shall in all cases except treason, felony or breach of the peace be privileged from arrest during the session of the General Assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house they shall not be questioned in any other place.

§ 21. The members of the General Assembly shall severally receive from the public treasury compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

MANNER OF BEGINNING SUITS AGAINST THE STATE

§ 22. The General Assembly shall direct by law in what courts and in what manner suits may be commenced against the State.

§ 23. They shall have power to pass all laws that are necessary to prohibit the introduction into this State of any slave or slaves who may have committed any high crime in any other State or Territory.

§ 24. The General Assembly shall not have power to pass any bill of divorce, but may prescribe by law the manner in which such cases shall be investigated in the courts of justice and divorces granted.

§ 25. The General Assembly shall have power to prohibit the introduction of any slave or slaves for the purpose of speculation or as an article of trade or merchandise; to oblige the owner of any slave or slaves to treat them with humanity; and in the prosecution of slaves for any crime they shall not be deprived of an impartial jury; and any slave who shall be convicted of a capital offense shall suffer the same degree

of punishment as would be inflicted on a free white person, and no other; and courts of justice before whom slaves shall be tried shall assign them counsel for their defense.

§ 26. The governor, secretary of state, auditor, treasurer and all the judges of the supreme, circuit and inferior courts of law and equity, and the prosecuting attorneys for the State shall be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend farther than removal from office and disqualification to hold any office of honor, trust or profit under this State. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

§ 27. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate; and when sitting for that purpose the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and for reasonable cause, which shall not be sufficient ground of impeachment, the governor shall, on the joint address of two-thirds of each branch of the Legislature, remove from office the judges of supreme and inferior courts. Provided, the cause or causes of removal be spread on the journals, and the party charged be notified of the same, and heard by himself and counsel before the vote is finally taken and decided.

§ 28. The appointment of all officers not otherwise directed by this Constitution shall be made in such manner as may be prescribed by law; and all officers, both civil and military, acting under the authority of this State shall, before entry on the duties of their respective offices, take an oath or affirmation to support the Constitution of the United States and of this State, and to demean themselves faithfully in office.

§ 29. No county now established by law shall ever be reduced by the establishment of any new county or counties to less than nine hundred square miles, nor to a less population than its ratio of representation in the House of Representatives; nor shall any county be hereafter established which shall contain less than nine hundred square miles (except Washington County, which may be reduced to six hundred square miles,) or a less population than would entitle each county to a member in the House of Representatives.

§ 30. The style of the laws of this State shall be: "Be it enacted by the General Assembly of the State of Arkansas."

§ 31. The State shall, from time to time, be divided into convenient districts, in such manner that the Senate shall be based upon the free

white male inhabitants of the State, each senator representing an equal number, as nearly as practicable; and until the first enumeration of the inhabitants shall be taken the district shall be arranged as follows:

The County of Washington shall compose one district, and elect two senators.

The Counties of Carroll, Searcy and Izard shall compose one district, and elect one senator.

The Counties of Independence and Jackson shall compose one district, and elect one senator.

The Counties of Lawrence and Randolph shall compose one district, and elect one senator.

The Counties of Johnson and Pope shall compose one district, and elect one senator.

The Counties of Crawford and Scott shall compose one district, and elect one senator.

The Counties of Conway and Van Buren shall compose one district, and elect one senator.

The Counties of Pulaski, White and Saline shall compose one district, and elect one senator.

The Counties of Hot Spring, Clark and Pike shall compose one district, and elect one senator.

The Counties of Hempstead and Lafayette shall compose one district, and elect one senator.

The Counties of Sevier and Miller shall compose one district, and elect one senator.

The Counties of Chicot and Union shall compose one district, and elect one senator.

The Counties of Arkansas and Jefferson shall compose one district, and elect one senator.

The Counties of Phillips and Monroe shall compose one district, and elect one senator.

The Counties of St. Francis and Greene shall compose one district, and elect one senator.

The Counties of Crittenden and Mississippi shall compose one district, and elect one senator.

And the Senate shall never consist of less than seventeen, nor more than thirty-three members. And, as soon as the Senate shall meet after the first election to be held under this Constitution, they shall cause the senators to be divided by lot into two classes—nine of the first class and eight of the second; and the seats of the first class shall be vacated at the end of two years from the time of their election, and the seats of the second class at the end of four years from the time of their election in, order that one class of senators may be elected every two years.

§ 32. An enumeration of the inhabitants of the State shall be taken under the direction of the General Assembly on the first day of January, one thousand eight hundred and thirty-eight, and at the end of every four years thereafter; and the General Assembly shall, at the first

session after the return of every enumeration, so alter and arrange the senatorial districts that each district shall contain, as nearly as practicable, an equal number of free white male inhabitants. Provided, that Washington County, as long as its population shall justify the same, may, according to its numbers, elect more than one senator; and such districts shall then remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senatorial district.

§ 33. The ratio of representation in the Senate shall be fifteen hundred free white male inhabitants to each senator, until the senators amount to twenty-five in number, and then they shall be equally apportioned upon the same basis throughout the State, in such ratio, as the increased numbers of free white male inhabitants may require, without increasing the senators to a greater number than twenty-five, until the population of the State amounts to five hundred thousand souls; and when an increase of senators takes place, they shall, from time to time, be divided by lot and classed as prescribed above.

§ 34. The House of Representatives shall consist of not less than fifty-four, nor more than one hundred, representatives, to be apportioned among the several counties in this State, according to the number of free white male inhabitants therein, taking five hundred as the ratio until the number of representatives amounts to seventy-five, and when they amount to seventy-five they shall not be further increased until the population of the State amounts to five hundred thousands souls. Provided, that each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative; and until the first enumeration shall be taken the representatives shall be apportioned among the several counties, as follows:

The County of Washington shall elect six representatives.

The County of Scott shall elect one representative.

The County of Johnson shall elect two representatives.

The County of Pope shall elect two representatives.

The County of Conway shall elect one representative.

The County of Van Buren shall elect one representative.

The County of Carroll shall elect two representatives.

The County of Searcy shall elect one representative.

The County of Izard shall elect one representative.

The County of Independence shall elect two representatives.

The County of Crawford shall elect three representatives.

The County of Jackson shall elect one representative.

The County of Lawrence shall elect two representatives.

The County of Randolph shall elect two representatives.

The County of White shall elect one representative.

The County of Pulaski shall elect two representatives.

The County of Saline shall elect one representative.

The County of Hot Spring shall elect one representative.
The County of Clark shall elect one representative.
The County of St. Francis shall elect two representatives.
The County of Pike shall elect one representative.
The County of Hempstead shall elect two representatives.
The County of Miller shall elect one representative.
The County of Sevier shall elect one representative.
The County of Lafayette shall elect one representative.
The County of Union shall elect one representative.
The County of Arkansas shall elect two representatives.
The County of Jefferson shall elect one representative.
The County of Monroe shall elect one representative.
The County of Phillips shall elect two representatives.
The County of Greene shall elect one representative.
The County of Crittenden shall elect two representatives.
The County of Mississippi shall elect one representative.
The County of Chicot shall elect two representatives.

And at the first session of the General Assembly after the return of every enumeration the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed.

MODE OF AMENDING THE CONSTITUTION

The General Assembly may at any time propose such amendments to this Constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this State three several times, at least twelve months before the next general election; and if, at the first session of the General Assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this Constitution. Provided, that such proposed amendments shall be read on three several days in each house, as well when the same are proposed as when they are finally ratified.

ARTICLE V

EXECUTIVE DEPARTMENT

§ 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Arkansas."

§ 2. The Governor shall be elected by the qualified electors at the time and places where they shall respectively vote for representatives.

§ 3. The returns of every election for Governor shall be sealed up and transmitted to the Speaker of the House of Representatives, who

shall, during the first week of the session, open and publish them in the presence of both houses of the General Assembly. The person having the highest number of votes shall be the Governor; but if two or more shall be equal the highest in votes, one of them shall be chosen Governor by the joint vote of both houses. Contested elections for Governor shall be determined by both houses of the General Assembly in such manner as shall be prescribed by law.

§ 4. The Governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than eight years in any term of twelve years. He shall be at least thirty years of age, a native-born citizen of Arkansas, or a native-born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this Constitution, if not a native of the United States, and shall have been a resident of the same at least four years next before his election.

§ 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive, within that period, any other emoluments from the United States, or any one of them, or from any foreign power.

§ 6. He shall be commander-in-chief of the army of this State, and of the militia thereof, except when they shall be called into the service of the United States.

§ 7. He may require information in writing from the officers of the executive department on any subject relating to the duties of their respective offices.

§ 8. He may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place if that shall have become, since their last adjournment, dangerous from any enemy or from contagious diseases. In case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper—not beyond the day of the next meeting of the General Assembly.

§ 9. He shall, from time to time, give to the General Assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§ 10. He shall take care that the laws be faithfully executed.

§ 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons after conviction and remit fines and forfeitures under such rules and regulations as

shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons, and he may, in the recess of the Senate, respite the sentence until the end of the next session of the General Assembly.

§ 12. There shall be a seal of this State, which shall be kept by the Governor and used by him officially, and the present seal of the Territory shall be the seal of the State until otherwise directed by the General Assembly.

§ 13. All commissions shall be in the name and by the authority of the State of Arkansas, be sealed with the seal of the State, signed by the Governor, and attested by the Secretary of State.

§ 14. There shall be a Secretary of State elected by a joint vote of both Houses of the General Assembly, who shall continue in office during the term of four years and until his successor in office be duly qualified. He shall keep a fair register of all the official acts and proceedings of the Governor and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before the General Assembly, and shall perform such other duties as may be required by law.

§ 15. Vacancies that may happen in offices the election to which is vested in the General Assembly shall be filled by the Governor during the recess of the General Assembly by granting commissions, which shall expire at the end of the next session.

§ 16. Every bill which shall have passed both Houses shall be presented to the Governor. If he approve he shall sign it, but if he shall not approve it he shall return it, with his objections, to the House, in which it shall have originated, who shall enter his objections at large upon their journals and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be reconsidered, and if approved by a majority of the whole number elected to that House it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays and the names of the persons voting for or against the bill shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in such case it shall not be a law.

§ 17. Every order or resolution to which the concurrence of both Houses may be necessary, except on questions of adjournment, shall be

presented to the Governor, and before it shall take effect be approved by him, or being disapproved, shall be repassed by both Houses according to the rules and limitations prescribed in the case of a bill.

§ 18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation or absence from the State, the President of the Senate shall exercise all the authority appertaining to the office of Governor until another Governor shall have been elected and qualified, or until the Governor, absent or impeached, shall return or be acquitted.

§ 19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die or be absent from the State, the Speaker of the House of Representatives shall, in like manner, administer the government.

§ 20. The President of the Senate and the Speaker of the House of Representatives, during the time they respectively administer the government, shall receive the same compensation which the Governor would have received had he been employed in the duties of his office.

§ 21. Whenever the office of Governor shall have become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within eighteen months of the term for which the late Governor shall have been elected, the President of the Senate or Speaker of the House of Representatives, as the case may be, exercising the powers of Governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections of Governor as far as applicable; the returns shall be made to the Secretary of State, who, in presence of the acting Governor and Judges of the Supreme Court, or one of them at least, shall compare them, and, together with said acting Governor and Judges, declare who is elected; and if there be a contested election it shall be decided by the Judges of the Supreme Court in manner to be prescribed by law.

§ 22. The Governor shall always reside at the seat of government.

§ 23. No person shall hold the office of Governor and any other office or commission, civil or military, either in this State or under any State, or the United States or any other power, at one and the same time.

§ 24. There shall be elected by the joint vote of both houses of the General Assembly an Auditor and Treasurer for this State, who shall hold their offices for the term of two years and until their respective successors are elected and qualified, unless sooner removed, and shall keep their respective offices at the seat of government, and perform

such duties as shall be prescribed by law; and in case of vacancy by death, resignation or otherwise, such vacancy shall be filled by the Governor as in other cases.

MILITIA

§ 1. The militia of this State shall be divided into convenient divisions, brigades, regiments and companies, and officers of corresponding titles and rank elected to command them, conforming, as nearly as practicable, to the general regulations of the army of the United States.

§ 2. Major-Generals shall be elected by the Brigadier-Generals and field officers of their respective divisions; Brigadier-Generals shall be elected by the field officers and commissioned company officers of their respective brigades; field officers shall be elected by the officers and privates of their respective regiments, and Captains and subaltern officers shall be elected by those subject to military duty in their respective companies.

§ 3. The Governor shall appoint the Adjutant-General and other members of his staff, and Major-Generals, Brigadier-Generals and commanders of regiments shall respectively appoint their own staff, and all commissioned officers may continue in office during good behavior, and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VI

JUDICIAL DEPARTMENT

§ 1. The judicial power of this State shall be vested in one Supreme Court, in Circuit Courts, in County Courts and in Justices of the Peace. The General Assembly may also vest such jurisdiction as may be deemed necessary in corporation courts, and when they deem it expedient may establish Courts of Chancery.

§ 2. The Supreme Court shall be composed of three judges, one of whom shall be styled Chief Justice, and any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall in every case be necessary to a decision. The Supreme Court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations as may from time to time be prescribed by law. It shall have a general superintending control over all inferior and other courts of law and equity. It shall have power to issue writs of error and supersedeas, certiorari and habeas corpus, mandamus and quo

warranto and other remedial writs, and to hear and determine the same. Said judges shall be conservators of the peace throughout the State, and shall severally have power to issue any of the aforesaid writs.

§ 3. The Circuit Court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony at the common law, and original jurisdiction of all civil cases which shall not be recognizable before Justices of the Peace, until otherwise directed by the General Assembly, and original jurisdiction in all matters of contract where the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county as may be by law directed.

§ 4. The State shall be divided into convenient circuits, each to consist of not less than five nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who during his continuance in office shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

§ 5. The Circuit Courts shall exercise a superintending control over the County Courts and over Justices of the Peace in each county in their respective circuits, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

§ 6. Until the General Assembly shall deem it expedient to establish Courts of Chancery the Circuit Courts shall have jurisdiction in matters of equity, subject to appeal to the Supreme Court in such manner as may be prescribed by law.

§ 7. The General Assembly shall by joint vote of both Houses elect the judges of the Supreme and Circuit Courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the Supreme Court shall be at least thirty years of age; they shall hold their offices during the term of eight years from the date of their commissions. Immediately after such election by the first General Assembly, the President of the Senate and Speaker of the House of Representatives shall proceed by lot to divide the judges into three classes. The commission of the first class shall expire at the end of four years; of the second class at the end of six years, and of the third class at the end of eight years, so that one-third of the whole number shall be chosen every four, six and eight years. The judges of the Circuit Court shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions. The Supreme Court shall appoint its own clerk or clerks for the term of four years. The qualified voters of each county shall elect a clerk of the Circuit Court for their respective counties, who shall hold his office for the term of two years; and Courts of Chancery, if any be established, shall appoint their own clerks.

§ 8. The judges of the Supreme and Circuit Courts shall at stated times receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this State or the United States. The State's attorneys and clerks of the Supreme and Circuit Courts and Courts of Chancery, if any such be established, shall receive for their Services such salaries, fees and perquisites of office as shall be from time to time fixed by law.

§ 9. There shall be established in each county in the State a court to be holden by the Justices of the Peace, and called the County Court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvements and local concerns of the respective counties.

§ 10. There shall be elected by the Justices of the Peace of their respective counties a presiding judge of the County Court, to be commissioned by the Governor, and hold his office for the term of two years and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law as a presiding judge of the County Court, be a judge of the Court of Probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators and guardians, as may be prescribed by law, until otherwise directed by the General Assembly.

§ 11. The presiding judge of the County Court and Justices of the Peace shall receive for their services such compensation and fees as the General Assembly may from time to time by law direct.

§ 12. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been of counsel or have presided in an inferior court, except by consent of all the parties. In case all or any of the judges of the Supreme Court shall be thus disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the Governor of the State, and he shall immediately commission specially the requisite number of men of law knowledge for the trial and determination thereof. The same course shall be pursued in the Circuit and other inferior courts as prescribed in this section for cases in the Supreme Court. Judges of the Circuit Courts may temporarily exchange circuits, or hold courts for each other, under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

§ 13. The General Assembly shall, by a joint vote of both Houses, elect an attorney for the State for each circuit established by law, who shall continue in office two years and reside within the circuit for which he was elected at the time of and during his continuance in office. In all cases where an attorney for the State of any circuit fails to attend and prosecute according to law the court shall have power to appoint an attorney pro tempore. The attorney for the circuit in which the Supreme Court may hold its terms shall attend the Supreme Court and prosecute for the State.

§ 14. All writs and other process shall run in the name of the "State of Arkansas" and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

§ 15. The qualified voters residing in each township shall elect the Justices of the Peace for their respective townships. For every fifty voters there may be elected one Justice of the Peace provided that each township, however small, shall have two Justices of the Peace. Justices of the Peace shall be elected for the term of two years, and shall be commissioned by the Governor and reside in the townships for which they were elected during their continuance in office. They shall have individually, or two or more of them jointly, exclusive original jurisdiction in all matters of contract, except in actions of covenant where the sum in controversy is of one hundred dollars and under. Justices of the Peace shall in no case have jurisdiction to try and determine any criminal case or penal offense against the State, but may sit as examining courts and commit, discharge or recognize to the court having jurisdiction, for further trial, offenders against the peace. For the foregoing purposes they shall have power to issue all necessary process. They shall also have power to bind to keep the peace or for good behavior.

§ 16. The qualified voters of each township shall elect one Constable for the term of two years, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate Constable and a separate magistracy.

§ 17. The qualified voters of each county shall elect one Sheriff, one Coroner, one Treasurer and one County Surveyor for the term of two years. They shall be commissioned by the Governor, reside in their respective counties during their continuance in office and be disqualified for the office a second term if it should appear that they, or either of them, are in default for any moneys, collected by virtue of their respective offices.

ARTICLE VII

GENERAL PROVISIONS — EDUCATION

Knowledge and learning generally diffused through a community being essential to the preservation of a free government, and diffusing the opportunities and advantages of education through the various parts of the State being highly conducive to this end, it shall be the duty of the General Assembly to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this State for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are, or may be, intended. The General Assembly shall from time to time pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures and natural history, and countenance and encourage the principles of humanity, industry and morality.

EMANCIPATION OF SLAVES

§ 1. The General Assembly shall have no power to pass laws for the emancipation of slaves without the consent of the owners. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States. They shall have power to pass laws to permit owners of slaves to emancipate them, saving the right of creditors and preventing them from becoming a public charge. They shall have power to prevent slaves from being brought to this State as merchandise, and also to oblige the owners of slaves to treat them with humanity.

§ 2. Treason against the State shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

§ 3. No person who denies the being of a God shall hold any office in the civil department of this State, nor be allowed his oath in any court.

§ 4. No money shall be drawn from the treasury but in consequence of an appropriation by law, nor shall any appropriation of money for the support of an army be made for a longer term than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

§ 5. Absence on business of this State, or of the United States, or on a visit or necessary private business, shall not cause a forfeiture of a residence once obtained.

§ 6. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

§ 7. Internal improvements shall be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

§ 8. Returns for all elections for officers who are to be commissioned by the Governor, and for members of the General Assembly, shall be made to the Secretary of State.

§ 9. Within five years after the adoption of this constitution the laws — civil and criminal — shall be revised, digested and arranged, and promulgated in such manner as the General Assembly may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

§ 10. In the event of the annexation of any territory to this State, by a cession from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this Constitution to the contrary notwithstanding.

§ 11. The person of a debtor, except where there is strong presumption of fraud, shall neither be imprisoned nor continued in prison after delivering up his estate for the benefit of his creditors, in such manner as may be prescribed by law.

REVENUE

§ 1. All revenues shall be raised by taxation to be fixed by law.

§ 2. All property subject to taxation shall be taxed according to its value — that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value. Provided, the General Assembly shall have power to tax merchants, hawkers, peddlers and privileges in such manner as may, from time to time, be prescribed by law. And provided, further, that no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both Houses of the General Assembly.

§ 3. No poll-tax shall be assessed for other than county purposes.

§ 4. No other or greater tax shall be levied on the productions or labor of the country than may be required for expenses of inspection.

ESTABLISHMENT OF BANKS

§ 1. The General Assembly may incorporate one State bank, with such amount of capital as may be deemed necessary, and such number of branches as may be required for the public convenience, which shall become the repository of the funds belonging to or under control of the State, and shall be required to loan them out throughout the State and in each county in proportion to representation. And they shall further have power to incorporate one other banking institution, calculated to aid and promote the great agricultural interests of the country, and the faith and credit of the State may be pledged to raise the funds necessary to carry into operation the two banks herein specified. Provided, such security can be given by the individual stockholders as will guarantee the State against loss or injury.

SCHEDULE

§ 1. That no inconvenience may arise from the change of government, we declare that all writs, actions, prosecutions, judgments, claims and contracts of individuals and bodies corporate shall continue as if no change had taken place, and all process which may be issued under the authority of the Territory of Arkansas previous to the admission of Arkansas into the Union of the United States shall be as valid as if issued in the name of the State.

§ 2. All laws now in force in the Territory of Arkansas which are not repugnant to this Constitution shall remain in force until they expire by their own limitations, or be altered or repealed by the General Assembly.

§ 3. All fines, penalties and escheats accruing to the Territory of Arkansas shall accrue to the use of the State.

§ 4. All recognizances heretofore taken, or which may be taken before the change of territorial to a permanent State government, shall remain valid and shall pass over to and be prosecuted in the name of the State, and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity, shall pass over to the Governor or other State authority and their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which may have arisen or which may arise before the change from a territorial to a State government, and which shall then be pending,

shall be prosecuted to judgment and execution in the name of the State. All actions at law which now are or may be pending in any of the courts of record in the Territory of Arkansas may be commenced in or transferred to any court of record of the State which shall have jurisdiction of the subject-matter thereof, and all suits in equity may in like manner be commenced in or transferred to the court having chancery jurisdiction.

§ 5. All officers, civil and military, now holding commissions under authority of the United States, or of the Territory of Arkansas shall continue to hold and exercise their respective offices until they shall be superseded under the authority of the State.

§ 6. The first session of the General Assembly of the State of Arkansas shall be held at the City of Little Rock, which shall be and remain the seat of government until otherwise provided for by law.

§ 7. Elections shall be held at the several precincts on the first Monday of August next for a Governor; also, one Representative to Congress of the United States; also, for Senators and Representatives to the next General Assembly, clerks of the Circuit and County Courts, Sheriffs, Coroners, County Surveyors and Treasurers, Justices of the Peace and Constables.

§ 8. The next General Assembly shall be holden on the second Monday of September next.

§ 9. The election shall be conducted according to the existing laws of the Territory of Arkansas, and the returns of all township elections held in pursuance thereof shall be made to the clerks of the proper counties within five days after the day of election. The clerks of the Circuit Courts of the several counties shall immediately thereafter certify the returns of the election of Governor, and transmit the same to the Speaker of the House of Representatives, at the seat of government, in such time that they may be received on the second Monday of September next. As soon as the General Assembly shall be organized the Speaker of the House of Representatives and the President of the Senate shall, in the presence of both Houses, examine the returns and declare who is duly elected to fill that office; and if any two or more persons shall have an equal number of votes and a higher number than any other person, the General Assembly shall determine the election by a joint vote of both Houses; and the returns of the election for member to Congress shall be made to the Secretary of State within thirty days after the day of election.

§ 10. The oaths of office may be administered by any judge or justice of the peace until the General Assembly shall otherwise direct.

Done in convention at Little Rock, in the State of Arkansas, the thirtieth day of January, in the year of our Lord eighteen hundred

and thirty-six, and in the sixtieth year of the independence of the United States of America.

JOHN WILSON,
President of the Convention,
and Representative from the county of Clark.

JOHN ADAMS,
WM. McK. BALL,
JAS. WOODSON BATES,
MARK BEAN,
HENRY LAWSON BISCOE,
JAMES BOONE,
R. C. S. BROWN,
JOHN D. CALVERT,
ANDREW J. MAY,
ROBERT M'KAMY,
JOS. W. M'KEAN,
JOHN McLAIN,
NIMROD MENIFEE,
THOMAS MURRAY, Jr.,
JOHN RINGGOLD,
SAM C. ROANE,
JOHN ROBINSON,
JOHN DRENNEN,
THOMAS S. DREW,
WRIGHT W. ELLIOTT,
TERRENCE FARRELLY,
GEORGE W. FEREBEE,
ABSALOM FOWLER,
GEORGE HALBROOK,
ELIJAH KELLY,
JOHN F. KING,
JOHN WILSON,

LORENZO N. CLARK,
JOHN CLARK,
J. S. CONWAY,
WILLIAM CUMMINS,
ANTHONY H. DAVIES,
TOWNSEND DICKINSON,
G. MARSHALL,
G. L. MARTIN,
THOS. J. LACY,
JOHN L. LAFFERTY,
BUSHROD W. LEE,
DAVID W. LOWE,
CALEB S. MANLEY,
GRANDISON D. ROYSTON,
CHARLES R. SAUNDERS,
ANDREW SCOTT,
HENRY SLAVENS,
ROBERT SMITH,
WM. STRONG,
JAMES H. WALKER,
DAVID WALKER,
JOSIAH N. WILSON,
ABRAHAM WHINNERY,
TRAVIS G. WRIGHT,
CHARLES P. BERTRAND,
Secretary of the Convention.

AMENDMENTS TO THE 1836 CONSTITUTION

A. AMENDMENTS RATIFIED NOV. 17, 1846.

1. No bank or banking institution shall be hereafter incorporated or established in this State.

2. The General Assembly shall have power to compel the judges of the Circuit Courts to interchange circuits, either temporarily or permanently, under such regulations as may be provided by law.

3. The General Assembly shall have power to confer such jurisdiction as it may from time to time deem proper on justices of the peace in all matters of contract, covenants and in actions for the recovery of fines and forfeitures when the amount claimed does not exceed one hundred dollars, and in actions and prosecutions for assault and battery, and other penal offenses less than felony, which may be punishable by fine only.

4. Judges of the Supreme and Circuit Courts, clerks of the Supreme and Circuit Courts, attorneys for the State, Sheriffs, Coroners, County Treasurers, Justices of the Peace, Constables and all other officers whose term is fixed by the Constitution to a specified number of years shall hold their respective offices for the term now specified and until their successors are elected and qualified.

B. AMENDMENTS RATIFIED NOV. 24, 1848.

1. That the qualified voters of each judicial circuit in the State of Arkansas shall elect their circuit judge.

2. That the qualified voters of each judicial circuit shall elect their Prosecuting Attorney for the State.

3. That the qualified voters of each county shall elect a County and Probate Judge.

4. That no member of the General Assembly shall be elected to any office within the gift of the General Assembly during the term for which he shall have been elected.

5. That the General Assembly of the State of Arkansas shall not be restricted as to the number of counties that shall compose a judicial circuit in this State.

C. AMENDMENT RATIFIED DEC. 2, 1850.

That the words, "except Washington County, which may be reduced to six hundred square miles," included in parenthesis in Section 29 of Article IV, be stricken out of said Constitution.

CONSTITUTION OF THE STATE OF ARKANSAS OF 1861

PREAMBLE

We, the people of the State of Arkansas, by our delegates in convention assembled, at Little Rock, on Monday, the 4th day of March, A. D. 1861, having the right to change, alter or amend our Constitution, or organic law, in order to secure to ourselves and our posterity, the enjoyment of all rights of life, liberty and property, and the pursuit of happiness, do mutually agree with each other to continue ourselves as a free and independent State, by the name and style of "The State of Arkansas," and do ordain and establish the following Constitution for the future government thereof:

ARTICLE I

BOUNDARIES OF THE STATE

We do declare and establish, ratify and confirm the following as the permanent boundaries of the State of Arkansas, that is to say: Beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude, running from thence with the said parallel of latitude to the St. Francis River; thence up the middle of the main channel of said river, to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red River as by acts of Congress of the United States and the treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river, to the thirty-sixth degree of north latitude, the point of beginning. These being the boundaries of the State of Arkansas, as defined by the Constitution thereof, adopted by a convention of the representatives of the people of said State, on the 30th day of January, anno domini, eighteen hundred and thirty-six, being the same boundaries which limited the area of the Territory of Arkansas, as it existed prior to that time.

ARTICLE II

DECLARATION OF RIGHTS

That the great and essential principles of liberty and free government may be recognized and established, WE DECLARE:

§ 1. That all free white men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

§ 2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have, at all times, an unqualified right to alter, reform or abolish their governments in such manner as they may think proper.

§ 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; and no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; that no human authority can, in any case whatsoever, interfere with the rights of conscience; and that no preference shall ever be given to any religious establishment, or mode or form of worship.

§ 4. That the civil rights privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

§ 5. That all election shall be free and equal.

§ 6. That the right of trial by jury shall remain inviolate to free white men and Indians.

§ 7. That printing presses shall be free to every person; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject—being responsible for the abuse of that liberty.

§ 8. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is matter for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury have the right to determine the law and the facts.

§ 9. That the people shall be secure in their persons, houses, papers, valuables and possessions from unreasonable searches and seizure; and that general warrants, whereby any officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offenses are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

§ 10. That no free white man, or Indian, shall be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

§ 11. That in all criminal prosecutions against free white men and Indians, the accused shall have the right to be heard by himself and his counsel; to demand the nature of the cause of the accusation against him, and have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the crime may be charged to have been committed, and shall not be compelled to give evidence against himself.

§ 12. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

§ 13. That all penalties shall be reasonable and proportioned to the nature of the offense.

§ 14. That no free white man, or Indian, shall be put to answer to any criminal charge punishable by death or imprisonment in a jail or penitentiary, but by presentment, indictment or impeachment.

§ 15. That no conviction shall work corruption of blood or forfeiture of the estate of the convict.

§ 16. That all free white persons, Indians included, shall be bailable by sufficient securities, unless in capital offenses, where the proof is evident or the presumption is great. And the principle of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion where the public safety may require it.

§ 17. That excessive bail shall in no case be required, nor excessive fines imposed.

§ 18. That no ex post facto law, or law impairing the obligation of contracts shall ever be passed.

§ 19. That no perpetuities or monopolies shall ever be allowed or granted, nor shall any hereditary emolument, privileges or honors be conferred or granted in this State.

§ 20. That citizens have the right in a peaceable manner to assemble for their common good, to instruct their representatives, and to apply to those invested with the power of government, for redress of grievances or other proper purposes, by address or remonstrance.

§ 21. That the free white men and Indians of this State have the right to keep and bear arms for their individual or common defense.

§ 22. That no soldier shall be quartered, in time of peace, in any house, without the consent of the owner; nor in time of war, but in a manner prescribed by law.

§ 23. The military shall be kept in strict subordination to the civil power.

§ 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against the encroachment of the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III

OF DEPARTMENTS

§ 1. The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of which to be confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judicial to another.

§ 2. No person or collection of persons being of one of those departments, shall exercise any of the powers belonging to either of the others; except in the instances hereinafter expressly directed or permitted.

ARTICLE IV

LEGISLATIVE DEPARTMENT

§ 1. The legislative power of this State shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives.

§ 2. Every free white male citizen of the Confederate States of America, who shall have attained the age of twenty-one years, and shall have been a citizen of the State six months next preceding the election at which he may desire to vote, shall be deemed a qualified elector and be entitled to vote in the county or district where he actually resides, for each and every office made elective under this State or the Constitution and laws of the Confederate States of America. Provided that no soldier,

seaman or marine in the army or navy of the Confederate States of America shall be entitled to vote at any election within this State.

§ 3. The House of Representatives shall consist of members to be chosen every two years, by the qualified electors of the several counties, at such times as the General Assembly has prescribed, or may hereafter prescribe.

§ 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-five years; who shall not be a free white male citizen of the Confederate States of America; who shall not have been an inhabitant of this State one year next preceding his election; and who shall not at the time of his election have an actual residence in the county he may be chosen to represent.

§ 5. The Senate shall consist of members to be chosen every four years by the qualified electors of the several districts, as they are now, or may be hereafter arranged by the General Assembly. The election for Senators shall take place at the time now appointed, or which may hereafter be appointed by law.

§ 6. No person shall be a Senator who shall not have attained the age of thirty years; who shall not be a free white male citizen of the Confederate States of America; who shall not have been an inhabitant of this State one year, next preceding his election, and who, at the time thereof, shall not have an actual residence in the district he may be chosen to represent.

§ 7. The General Assembly shall meet every two years, on the first Monday in November, or at such time as may hereafter be appointed for that purpose by that body, and at the capitol, in the City of Little Rock, until otherwise directed by law.

§ 8. All general elections shall be by ballot, until otherwise directed by law, and shall be held every two years, on the first Monday in October, until altered by law. The first general election to be hereafter held on the first Monday in October, eighteen hundred and sixty-two. The electors, in all cases, except in cases of treason, felony and breach of the peace shall be privileged from arrest during their attendance on elections and in going to and returning therefrom.

§ 9. The Governor shall issue writs of election to fill such vacancies as may occur in either branch of the General Assembly.

§ 10. Militia officers, justices of the peace, and postmasters, are declared to be eligible to either branch of the General Assembly; but no person who now is, or who shall hereafter be a collector or holder of public money, nor any assistant or deputy of such holder or collector of

public money, shall be eligible to either branch of the General Assembly, nor to any office of profit or trust, until he shall have accounted for and paid over all sums for which he may be liable; and no person holding any office of trust or profit under the Confederate States (except postmasters) shall be eligible to any office of trust or profit belonging to either of the three departments of this State.

§ 11. Persons convicted of bribery, perjury or other infamous crime, are excluded from every office of trust or profit, and from the right of suffrage in this State.

§ 12. Persons convicted of giving or offering any bribe to procure either their own election or appointment, or that of any one else, to any office, are ineligible to any office of profit or trust, and are disqualified from voting at any election in this State.

§ 13. No member of the General Assembly shall be elected or appointed to any civil office in this State, which shall have been created, or the emoluments of which shall have been increased, whilst he was a member thereof, except he be elected to such office by a vote of the people, and that no member of the General Assembly shall be elected to any office within the gift of the General Assembly during the term for which he shall have been elected.

§ 14. Each House of the General Assembly shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

§ 15. Each House may determine the rule of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offense. They shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays upon any question shall be entered on the journal by the request of any five members.

§ 16. The door of each House, when in session, or in committee of the whole shall be kept open, except in cases which may require secrecy; and each House may punish by fine and imprisonment any person not a member, who shall be guilty of disrespect to the House by any disorderly or contemptuous behavior in its presence when in session; but such imprisonment shall not extend beyond the final adjournment of that session.

§ 17. Bills may originate in either House, and be amended or rejected in the other; and every bill shall be read on three different days in each house, unless two-thirds of the House where the same is pending shall dispense with the rules; and every bill having passed both Houses, shall be signed by the President of the Senate and the Speaker of the House of Representatives.

§ 18. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the General Assembly, the vote shall be taken viva voce and entered on the journal.

§ 19. The Senators and Representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the General Assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place.

§ 20. The members of the General Assembly shall severally receive from the public treasury compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

§ 21. The General Assembly may direct, by law, in what courts, and in what manner, suits may be commenced against the State.

§ 22. The General Assembly may prohibit the introduction into this State of any slave or slaves who may have committed any high crime in any other State or Territory. The introduction of slaves into this State for sale, trade, speculation or merchandise may be prohibited by the General Assembly.

§ 23. The General Assembly shall not have power to pass any bill of divorce; but may prescribe by law the manner in which such cases shall be investigated in the courts of justice, and divorces be granted.

§ 24. The General Assembly may, by law, oblige owners of slaves to treat them with humanity, and may prescribe a code of laws, defining their rights, regulating their intercourse with each other, and their relations with the free white people of this State; defining crimes which may be committed by slaves; prescribing appropriate punishment for such crimes, and providing courts for the trial of slaves, and the mode of proceeding in such courts.

§ 25. The Governor, Secretary of State, Auditor, Treasurer, the Judges of the Supreme Court, the judges of the several circuit courts of law and equity, and the several prosecuting attorneys for the State shall

be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this State; the party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

§ 26. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate, and, when sitting for that purpose the Senators shall be on oath, or affirmation, to do justice according to law and evidence. When the Governor shall be tried, the Chief Justice of the Supreme Court shall preside and no person shall be convicted without the concurrence of two-thirds of all the Senators elected; and for reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall, on the joint address of two-thirds of each branch of the General Assembly, remove from office the judges of the Supreme and other courts. Provided, the cause or causes of removal be spread on the journals, and the party charged be notified of the same, and heard by himself and counsel, before the vote is finally taken and decided.

§ 27. The appointment or election of all officers, not otherwise directed by this Constitution, shall be made in such manner as may be prescribed by law; and all such officers, civil and military, under the authority of this State, shall, before they enter on their duties, take the following oath or affirmation that is to say, "I, _____, _____, do solemnly swear or affirm that I will support the Constitution of the Confederate States of America, and of this State, and will abide and observe all the ordinances passed by the convention of the people of this State, and will demean myself faithfully in office." When the ordinances of this convention expire, every officer of this State shall take an oath to support the Constitution of the Confederate States of America, and of the State of Arkansas, and faithfully demean himself in office.

§ 28. No county now established by law shall ever be reduced by the establishment of any new county or counties to less than six hundred and twenty-five square miles, nor to a less population than its ratio of representation in the House of Representatives, according to the ratio as it may exist by law at the time; nor shall any county be hereafter established which shall contain less than six hundred and twenty-five square miles, nor a less population than would entitle such county to a member in the House of Representatives, according to the ratio of representation then established by law.

§ 29. The style of the laws of this State shall be: "Be it enacted by the General Assembly of the State of Arkansas."

§ 30. The State shall, from time to time, be divided into convenient senatorial districts, formed of contiguous territory, in such manner as

the General Assembly shall hereafter provide; and in arranging such districts the General Assembly shall do so, taking into consideration the free white male inhabitants of the State, so that each Senator may represent an equal number, as nearly as may be, of the free white male inhabitants thereof, according to the census enumeration; and until the next enumeration of the census, or inhabitants of this State, the senatorial districts as now laid out by law shall continue.

§ 31. The Senate shall never consist of less than twenty-five, nor of more than thirty-five members. The allotment of Senators into two classes, as it now exists, shall continue until otherwise directed, and the successors of those in office shall be elected in the manner and at the time now required by law, and for the term of four years.

§ 32. The enumeration of the inhabitants of this State shall be taken under the direction of the General Assembly of this State, at the end of every four years from the time the last enumeration was taken under the Constitution and laws of this State, now in force therein.

§ 33. The House of Representatives shall consist of not less than seventy-six members, nor of more than one hundred Representatives, to be apportioned among the several counties of this State, according to the number of free white male inhabitants therein, taking such ratio as is now provided for by law as the ratio of representation, until the number of Representatives increases to one hundred; and when they shall number one hundred, they shall not be further increased until the population of the State numbers one million souls; provided, that each county as now organized shall be entitled to the number of Representatives to which it may be entitled under existing laws, until a future apportionment, under a future enumeration of the inhabitants of this State. And at the first session of the General Assembly after the return of every enumeration, the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed; provided further, that the county of Craighead shall be entitled to one Representative until the next enumeration and apportionment; provided further, that the said county of Craighead be added to the senatorial district of Randolph and Greene counties until otherwise provided by law.

§ 34. The General Assembly may, at any time, propose such amendments to this Constitution as two-thirds of each House shall deem expedient, which shall be published in all the newspapers published in this State, three several times, at least twelve months before the next general election; and if, at the first session of the General Assembly after such general election, two-thirds of each House shall, by yeas and nays ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this Constitution, provided that such proposed amendments shall be read on three several days, in each House, as well when the same are proposed, as when they are finally ratified.

§ 35. The General Assembly shall have power to regulate the militia system and military organization of the State, subject to the provisions of ordinances heretofore passed by the convention of the State of Arkansas.

ARTICLE V

EXECUTIVE DEPARTMENT

§ 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Arkansas."

§ 2. The Governor shall be elected by the qualified electors, at the time and places, when and where they shall respectively vote for representatives at general elections.

§ 3. The returns of every election for Governor shall be sealed up and transmitted to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in the presence of both Houses of the General Assembly. The person having the highest number of votes shall be the Governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen Governor by the joint vote of both Houses. Contested elections for Governor shall be determined by both Houses of the General Assembly in such manner as shall be prescribed by law.

§ 4. The Governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified; but he shall not be eligible for more than eight years, in any term of twelve years. He shall be at least thirty years of age, a native born citizen of Arkansas, or a native born citizen of the Confederate States of America, or a resident of the State of Arkansas ten years previous to the adoption of this Constitution, if not a native of the Confederate States of America, and shall have been a resident of this State at least four years next before his election.

§ 5. The Governor shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during that term for which he shall have been elected; nor shall he receive during that period, any other emolument from the Confederate States of America, or any one of them, or from any foreign power.

§ 6. The Governor shall be commander-in-chief of the army of this State and the Militia thereof, except when they shall be called into the service of the Confederate States of America, provided, nevertheless, that this provision shall not be taken to conflict with any ordinance or

ordinances which have been or may be passed by the convention of the people of the State of Arkansas.

§ 7. The Governor may require any information in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices.

§ 8. The Governor may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that should have become since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two Houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the General Assembly.

§ 9. The Governor shall, from time to time, give to the General Assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§ 10. The Governor shall take care that the laws are faithfully executed.

§ 11. In all criminal and penal cases, except in those of treason and impeachment, the Governor shall have power to grant pardons after conviction, and remit fines and forfeitures under such rules and regulations as may have been, or shall be prescribed by law. In case of treason he shall have the power, by and with the advice and consent of the Senate, to grant reprieves and pardons; and he may, in the recess of the Senate, respite the sentences until otherwise directed by the General Assembly.

§ 12. There shall be a seal of State provided, which shall be kept by the Governor, and used by him officially, and the present seal of State now in use, shall be the seal of State until otherwise directed by the General Assembly.

§ 13. All commissions shall be in the name, and by the authority of the State of Arkansas, be sealed with the seal of the State, signed by the Governor (except when otherwise directed by ordinance of the convention), and attested by the Secretary of State.

§ 14. There shall be a Secretary of State, elected by a joint vote of both houses of the General Assembly, who shall continue in office during the term of four years, and until his successor in office be duly qualified. He shall keep a fair register of all the official acts and proceedings of the government, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before the General Assembly, and shall perform such other duties as may be required by law.

§ 15. Vacancies that may happen in offices the election to which is vested in the General Assembly, shall be filled by the Governor during the recess of the General Assembly, by granting commissions, which shall expire at the end of the next session.

§ 16. Every bill which shall have passed both Houses of the General Assembly, shall be presented to the Governor. If he approve it, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the House in which it originated, which shall enter his objections at large upon its journal and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections of the Governor, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that House, it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the parties voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor, within three days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment, prevent its return, in which event it shall not be a law.

§ 17. Every order or resolution, to which the concurrence of both Houses of the General Assembly may be necessary, except on question of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both Houses, according to the rules and limitations in the case of a bill.

§ 18. In case of the impeachment of the Governor, his removal from office, his death, his refusal to qualify, his resignation or his absence from the State, the President of the Senate shall exercise all the authority appertaining to the office of Governor, until another governor shall have been elected and qualified or until the Governor, absent or impeached, shall return or be acquitted.

§ 19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the House of Representatives shall in like manner administer the government.

§ 20. The President of the Senate and the Speaker of the House of Representatives, during the time they respectively administer the government, shall receive the same compensation which the Governor would have received had he been employed in the duties of his office.

§ 21. Whenever the office of Governor shall have become vacant, by death, resignation, removal from office, or otherwise, provided such

vacancy shall not happen within eighteen months of the time for which the late Governor shall have been elected, the President of the Senate, or Speaker of the House of Representatives, as the case may be, exercising the powers of the Governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections of Governor, as far as applicable. The returns shall be made to the Secretary of State, who, in the presence of the acting Governor and judges of the Supreme Court, or one of them, at least, shall compare them, and together with the said acting Governor and judges, declare who is elected; and if there be a contested election, it shall be decided by the judges of the Supreme Court in the manner prescribed by law.

§ 22. The Governor shall always reside at the seat of government.

§ 23. No person shall hold the office of Governor, and any other office or commission, civil or military, either in this State or under any State of the Confederate States of America, or any other power at one and the same time.

§ 24. There shall be elected, by the joint vote of both Houses of the General Assembly, until otherwise provided by law, an Auditor and Treasurer for this State, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified, unless sooner removed; they shall keep their respective offices at the seat of government, and perform such duties as shall be prescribed by law; and in case of vacancy by death, resignation or otherwise, such vacancy shall be filled by the Governor as in other cases, so long as said officers remain elective by the General Assembly.

ARTICLE VI

JUDICIAL DEPARTMENT

§ 1. The judicial power of this State shall be vested in one Supreme Court, in Circuit Courts, in County Courts, in Probate Courts, in Corporation Courts, and in Justices of the Peace. The General Assembly may, when they deem it expedient, establish separate courts of Chancery.

§ 2. The Supreme Court shall be composed of three judges, the one of whom holding his seat under the oldest commission for the time being, shall be chief justice; any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall, in every case, be necessary to a decision. The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and

regulations as may, from time to time, be prescribed by law. It shall have a general superintending control over all inferior and other courts of law and equity; it shall have power to issue writs of error and supersedeas, certiorari and habeas corpus, mandamus and quo warranto and other remedial writs, in aid of its appellate jurisdiction, and to hear and determine the same. Said judges shall be conservators of the peace, throughout the State, and shall severally have power to issue any of the aforesaid writs.

§ 3. The Circuit Court shall have original jurisdiction over all criminal cases, which shall not otherwise be provided for by law, and exclusive original jurisdiction of all crimes amounting to felony, until otherwise provided by the General Assembly; and the original jurisdiction of all civil cases which shall not be cognizable before other inferior courts, or Justices of the Peace, until otherwise directed by law; and original jurisdiction in all matters of contract, where the sum in controversy is over one hundred dollars. It shall hold its terms at such place, in each county, as may be, by law, prescribed.

§ 4. The State shall be divided into convenient circuits, to consist of counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside, and be a conservator of the peace, within the circuit for which he shall have been elected. If, from any cause, at the time of holding a Circuit Court in any county in this State, there shall be no regular judge present, the attorneys present may select from among themselves one of their number to act as judge with all the power and authority of a regular judge, and in case the judge, regular or special, shall be interested in any case or cases, or otherwise incompetent, the attorneys present may select a judge to try such cases, who shall take the oath prescribed by law previous to entering upon the discharge of his duties.

§ 5. The Circuit Courts shall exercise a superintending control over all inferior courts, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

§ 6. Until the General Assembly shall deem it expedient to establish Courts of Chancery, the Circuit Courts shall have jurisdiction in matters of equity, subject to revision or review, in such manner as the General Assembly may have, or shall hereafter prescribe. The special Chancery Court, heretofore created or established, for the county of Pulaski, is hereby confirmed in the jurisdiction conferred upon said Court until otherwise provided by law.

§ 7. The judges of the Supreme Court shall be appointed by the Governor, by and with the advice and consent of the Senate. The judges of the Supreme Court shall be at least thirty years of age; they shall hold their office during the term of eight years from the date of their

commissions, and until their successors are appointed and qualified; the first appointment to take place at the session of the General Assembly next before the expiration of the term for which the judges of the Supreme Court now in office expire, respectively. And in case of vacancy on the Supreme bench, the same shall be filled by executive appointment, to continue until the end of the next session of the General Assembly.

§ 8. The qualified voters of each judicial circuit in the State of Arkansas shall elect their circuit judges. The judges of the Circuit Courts shall be at least twenty-five years of age, and shall be elected for the term of four years from and after the dates of their commissions, and until their successors are elected and qualified — and all elections of circuit judges shall be held as is, or may be provided by law.

§ 9. The Supreme Court shall appoint its own clerk, or clerks, for the term of four years; and the qualified voters of each county shall elect a clerk of the Circuit Court for their respective counties, who shall hold office for the term of two years, and until his successor is elected and qualified — the first election of circuit clerks, under this Constitution, to be held at the general election next before the expiration of the commissions of the present incumbents. Courts of Chancery, when established, shall appoint their own clerks.

§ 10. The judges of the Supreme and circuit courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are or shall be appointed or elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit, under this State, or the Confederate States of America. The State's attorneys and clerks of the Supreme and Circuit Courts, and Courts of Chancery, if any other be established, shall receive for their services such salaries, fees and perquisites of office as shall be, from time to time, fixed by law.

§ 11. There shall be established, in each county in the State, a court, to be holden by the justices of the peace, and called the County Court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

§ 12. There shall be elected, by the qualified voters of the respective counties a presiding judge of the county court, to be commissioned by the Governor, and to hold his office for the term of two years, and until his successor is elected and qualified. The first election under this section shall take place at the general election next before the commissions of the present incumbents expire. The presiding judge of the county court, in addition to the duties that may be required of him by

law, as such presiding judge, shall be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators and guardians, lunatics and insane persons, as may be prescribed by law, until otherwise directed by the General Assembly.

§ 13. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the Supreme Court shall be thus disqualified from presiding in any cause or causes, the court, or judges thereof, shall certify the same to the Governor of the State, and he shall immediately commission specially the requisite number of men of law knowledge for the trial and determination thereof. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

§ 14. The qualified voters of each judicial circuit shall elect a Prosecuting Attorney for the State, who shall continue in office for two years, and until his successor is elected and qualified. The first election under this Constitution shall take place as is now or may be provided by law. Such attorney shall reside in the circuit for which he is elected. If any attorney for the State shall fail to attend and prosecute according to law, the court shall have power to appoint one pro tempore. The attorney for the circuit in which the Supreme Court is held shall attend the court and prosecute for the State.

§ 15. All writs and other process shall run in the name of "the State of Arkansas," and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude "against the peace and dignity of the State of Arkansas."

§ 16. The qualified voters residing in each township, shall elect the justices of the peace for their respective townships. For every one hundred voters there may be elected one justice of the peace; Provided, That each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for the term of two years, and shall be commissioned by the Governor, and reside in the township for which they were elected, during their continuance in office. The first election for Justice of the Peace under this Constitution, shall take place at the next general election, and those in office at this time shall continue in office until their successors are elected and qualified; Justices of the Peace shall have, individually, or two or more of them jointly, original jurisdiction in cases of bastardy and in all matters of contract, and in actions for the recovery of fines and forfeitures, where the amount claimed does not exceed one hundred dollars, and such

jurisdiction as may be provided by law in actions ex delicto, where the damages do not exceed one hundred dollars, and prosecutions for assault and battery, and other penal offenses less than felony, which may be punishable by fine only. Every action cognizable before a Justice of the Peace, instituted by a summons or warrant, shall be brought before some Justice of the Peace of the township wherein the defendant resides, or is found, or if there be one or more defendants in different townships, then the township where one of them resides is found. They may also sit as examining courts, and commit, discharge, or recognize any person charged with any crime, of any grade. For the foregoing purposes they shall have power to issue all necessary process. They shall also have power to bind to keep the peace, or for good behavior.

§ 17. The qualified voters of each township shall elect one constable for the term of two years, who shall, during his continuance in office, reside in the township for which he was elected. The constables now in office, shall continue till their terms expire, and the first election under this Constitution shall be held at the next general election. Incorporated towns and cities may have their own separate constables.

§ 18. The qualified voters of each county shall elect one sheriff, one coroner, one treasurer and one county surveyor, for the term of two years, at the election next before the term of those now in office expire. They shall be commissioned by the Governor, reside in their respective counties during their continuance in office, and be disqualified for the office a second time, if it should appear that they, or either of them, are in default for any moneys collected by virtue of their respective offices.

ARTICLE VII

GENERAL PROVISIONS — EDUCATION

§ 1. The General Assembly shall apply any and all funds which may be raised for the purpose of education, to the accomplishment of the object for which they may be raised; and from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of art, science, commerce, manufactures, and natural history; and countenance and encourage the principles of humanity, industry and morality.

§ 2. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or their own confession in open court.

§ 3. The General Assembly shall have no power to pass laws for the emancipation of slaves.

§ 4. No person who denies the being of a God shall hold any office in this State, nor be allowed his oath in any court.

§ 5. No money shall be drawn from the treasury, but in consequence of an appropriation by law, nor shall any appropriation of money, for the support of an army, be made for a longer term than two years; and a regular statement and account of the receipts and expenditures of all public moneys shall be published with the promulgation of the laws.

§ 6. Absence on business for this State, or for the Confederate States of America, or on a visit, or on necessary private business, shall not cause a forfeiture of a residence once attained.

§ 7. No lottery shall ever be authorized by this State, nor shall the sale of lottery tickets be allowed.

§ 8. Returns of all elections for officers, who are to be commissioned by the Governor, and for members of the General Assembly, shall be made to the Secretary of State.

§ 9. Within ten years from the session of the General Assembly, begun and held on the first Monday in November, eighteen hundred and fifty-six, and every ten years thereafter, the laws, civil and criminal, of this State, shall be revised or codified, digested, or arranged, and promulgated in such manner as provided by law.

§ 10. In the event of the annexation of any territory to this State, by cession from the Confederate States of America, or from any other source, laws may be passed extending to the inhabitants of such territory, all the rights and privileges which may be required by the terms of such cession, anything in this Constitution to the contrary notwithstanding.

§ 11. Imprisonment for debt shall not be allowed, in this State, except when an allegation of fraud on the part of the debtor shall be clearly proved.

§ 12. The General Assembly of this State shall not distribute the public lands, late the property of the United States, nor the proceeds of the same among the counties, but the same shall be applied to general purposes.

REVENUE

§ 1. All revenue shall be raised by taxation, to be fixed by law.

§ 2. All property, subject to taxation, shall be taxed according to its true value — that value to be ascertained in such manner as the

General Assembly shall direct; making the same equal and uniform throughout the State. No one species of property, from which a tax may be collected, shall be taxed higher than another species of property of equal value; Provided, the General Assembly shall have power to tax merchants, hawkers, peddlers, and privileges, in such manner as may, from time to time, be prescribed by law, and, provided further, that no other or greater amount of revenue shall at any time be levied, than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both houses of the General Assembly; and, provided further, that the Legislatures may authorize the county courts in this State to levy and collect a specific tax, for the purpose of building levees to protect their respective counties from overflow.

§ 3. No poll tax shall be assessed for other than corporation or county purposes.

§ 4. No other or greater tax shall be levied on the productions or labor of the country than may be required for expenses of inspection.

SCHEDULE

§ 1. That no inconveniences may arise from this change of government, we declare that all writs, actions, prosecutions, judgments, claims and contracts, of individuals and bodies corporate, shall continue as if no change had taken place in the Constitution and government of this State; and all process which may have been issued under the authority of this State previous to this time shall be as valid as if issued after the adoption of this Constitution.

§ 2. All laws now in force in this State, which are not repugnant to this Constitution, or the ordinances of the convention, shall remain in force until they expire by their own limitations, or be altered or repealed by the General Assembly.

§ 3. In case any ordinance which may have been passed by this convention conflicts in any respect with this Constitution, and the ordinances so conflicting herewith provides that it shall only have effect or force for a limited time, such ordinance shall have effect rather than this Constitution.

§ 4. All officers, civil and military, now holding commissions under the authority of this State shall continue to hold and exercise their respective offices until they shall be suspended under the authority of this State, in pursuance of the provisions of this Constitution, or the ordinance passed by this convention.

§ 5. The next general election for officers of this State, under this Constitution, not otherwise herein provided for, shall be held on the

first Monday in October, A. D. 1862, in the manner now prescribed by law.

§ 6. The jurisdiction of corporation courts shall be confined to their respective corporate limits.

DAVID WALKER,
President of the Convention of the State of Arkansas.

ALEX. ADAMS,
THOMAS B. HANLY,
L. D. HILL,
ALEXANDER M. CLINGMAN,
ISAIAH C. WALLACE,
GEORGE P. SMOOTE,
J. H. PATTERSON, of Jackson,
I. H. HILLIARD,
WM. M. MAYO,
JAMES L. TOTTEN,
S. W. COCHRAN,
THOS. F. AUSTIN,
JOHN CAMPBELL,
JAMES W. CRENSHAW,
JAMES S. DOLLARHIDE,
FELIX I. BATSON,
FELIX R. LANIER,
MARCUS L. HAWKINS,
W. F. SLEMONS,
J. P. JOHNSON,
JABEZ M. SMITH,
J. A. RHODES,
WM. W. FLOYD,
J. N. SHELTON,
W. P. GRACE,
J. GOULD,
H. H. BOLINGER,
BENJ. F. HAWKINS,
H. FLANAGIN,
M. SHELBY KENNARD,

MILTON D. BABER,
W. H. SPIVEY,
J. W. BUSH,
URBAN E. FORT,
ALFRED H. CARRIGAN,
W. M. FISHBACK,
JOSEPH STILLWELL,
GEO. C. WATKINS,
JAMES H. STIRMAN,
JAMES HENRY PATTERSON,
S. J. STALLINGS,
WILLIAM STOUT,
ARCHIBALD RAY,
ISAIAH DODSON,
A. W. HOBSON,
J. N. CYPERT,
WM. V. TATUM,
WILEY P. CRYER,
BURR H. HOBBS,
JESSE TURNER,
F. W. DESHA,
A. W. DINSMORE,
BENJAMIN C. TOTTEN,
SAMUEL KELLY,
E. T. WALKER,
SAMUEL ROBINSON,
JOHN P. A. PARKS,
JAMES YELL,
H. BUSSEY,
JOSEPH JESTER.

The foregoing Constitution was adopted in and by the State convention of Arkansas, in open session, on the first day of June, A. D. 1861, and this sheet was signed on that day by the several delegates whose names appear above.

Attest:

ELIAS C. BOUDINOT,
Secretary of the Convention of the State of Arkansas.

CONSTITUTION OF THE STATE OF ARKANSAS OF 1864

PREAMBLE

We, the people of the State of Arkansas, having the right to establish for ourselves a Constitution in conformity with the Constitution of the United States of America, recognizing the legitimate consequences of the existing rebellion, do hereby declare the entire action of the late convention of the State of Arkansas, which assembled in the City of Little Rock on the 4th day of March, 1861, was, and is, null and void, and is not now, and never has been, binding and obligatory upon the people.

That all the action of the State of Arkansas under the authority of said convention, of its ordinances, or of its Constitution, whether legislative, executive, judicial or military (except as hereinafter provided), was and is, hereby declared null and void, provided that this ordinance shall not be so construed as to affect the rights of individuals, or change county boundaries or county seats, or to make invalid the acts of Justices of the Peace or other officers in their authority to administer oaths or take and certify the acknowledgment of deeds of conveyance or other instruments of writing or in the solemnization of marriages; and provided, further, that no debt or liability of the State of Arkansas incurred by the action of said convention, or of the Legislature, or any department of the government under the authority of either, shall ever be recognized as obligatory.

And we, the people of the State of Arkansas, in order to establish therein a State government loyal to the government of the United States, to secure to ourselves and our posterity the protection and blessings of the Federal Constitution and the enjoyment of all the rights of liberty and the free pursuit of happiness, do agree to continue ourselves as a free and independent State by the name and style of "The State of Arkansas," and do ordain and establish the following Constitution for the government thereof:

ARTICLE I

BOUNDARIES OF THE STATE

We do declare and establish, ratify and confirm the following as the permanent boundaries of the State of Arkansas, that is to say: Beginning in the middle of the Mississippi River, on the parallel of thirty-six degrees north latitude, to the St. Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north, from the west to the southwest corner of the State of Missouri, and from thence to be bounded on the west to the north bank

of the Red River, as by acts of Congress of the United States and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river to the thirty-sixth degree of north latitude, the point of beginning — these being the boundaries of the State of Arkansas as defined by the Constitution thereof, adopted by a convention of the representatives of the people of said State on the 30th day of January, Anno Domini eighteen hundred and thirty-six, being the same boundaries which limited the area of the Territory of Arkansas as it existed prior to that time.

ARTICLE II

DECLARATION OF RIGHTS

That the great and essential principles of liberty and free government may be unalterably established, WE DECLARE:

§ 1. That all men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation and of pursuing their own happiness.

§ 2. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace and happiness. For the advancement of these ends they have, at all times, an unqualified right to alter, reform or abolish their government in such manner as they may think proper.

§ 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, and no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

§ 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

§ 5. That all elections shall be free and equal.

§ 6. That the right of trial by jury shall remain inviolate.

§ 7. That printing presses shall be free to every person, and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject — being responsible for the abuse of that liberty.

§ 8. In the prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels the jury shall have the right to determine the law and the facts.

§ 9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable search and seizures, and that general warrants, whereby any officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named whose offenses are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

§ 10. That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

§ 11. That in all criminal prosecutions the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment a speedy public trial by an impartial jury of the county or district in which the crime may have been committed, and shall not be compelled to give evidence against himself.

§ 12. That no person shall for the same offense be twice put in jeopardy of life or limb.

§ 13. That all penalties shall be reasonable, and proportionate to the nature of the offense.

§ 14. That no man shall be put to answer any criminal charge but by presentment, indictment or impeachment except as hereinafter provided.

§ 15. That no conviction shall work corruption of blood or forfeiture of estate under any law of this State.

§ 16. That all prisoners shall be bailable by sufficient securities, unless in capital offenses where the proof is evident or the presumption

is great. And the privilege of the writ of habeas corpus shall not be suspended, unless where, in case of rebellion or invasion, the public safety may require it.

§ 17. That excessive bail shall in no case be required, nor excessive fines imposed.

§ 18. That no ex post facto law, or law impairing the obligations of contracts, shall ever be made.

§ 19. That perpetuities and monopolies are contrary to the genius of a republic and shall not be allowed, nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this State.

§ 20. That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives and to apply to those invested with the power of the government for redress of grievances or other proper purposes, by address or remonstrance.

§ 21. That the free white men of this State shall have a right to keep and to bear arms for their common defense.

§ 22. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

§ 23. The military shall be kept in strict subordination to the civil power.

§ 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and, to guard against any encroachment on the rights herein retained or any transgression to any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III

OF DEPARTMENTS

§ 1. The power of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to-wit: those which are legislative to one, those which are executive to another, and those which are judicial to another.

§ 2. No person or collection of persons, being of one of those departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE IV

LEGISLATIVE DEPARTMENT

§ 1. The legislative power of this State shall be invested in a General Assembly, which shall consist of a Senate and House of Representatives.

QUALIFICATIONS OF ELECTORS

§ 2. Every free white male citizen of the United States who shall have attained the age of twenty-one years, and who shall have been a citizen of the State six months next preceding the election, shall be deemed a qualified elector and be entitled to vote in the county or district where he actually resides, or, in case of volunteer soldiers, within their several military departments or districts, for each and every office made elective under the State or under the United States, provided that no soldier, seaman or marine in the regular army or navy of the United States shall be entitled to vote at any election within the State in time of peace, and provided, further, that any one entitled to vote in this State in the county where he resides may vote for the adoption or rejection of this Constitution in any county in this State.

TIME OF CHOOSING REPRESENTATIVES

§ 3. The House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

QUALIFICATIONS OF A REPRESENTATIVE

§ 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-five years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State one year, and who shall not at the time of his election, have an actual residence in the county he may be chosen to represent.

QUALIFICATIONS OF A SENATOR

§ 5. The Senate shall consist of members to be chosen every four years by the qualified electors of the several districts.

§ 6. No person shall be a Senator who shall not have attained the age of twenty-five years; who shall not be a free white male citizen of

the United States; who shall not have been an inhabitant of the State one year, and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent.

§ 7. The General Assembly shall meet every two years, on the first Monday in November, at the seat of government until changed by law, except that the General Assembly for the year 1864 shall meet on the second Monday in April of that year.

MODE OF ELECTION AND TIME AND PRIVILEGES OF ELECTORS

§ 8. All general elections shall be viva voce until otherwise directed by law, and commence and be holden every two years, on the first Monday in August, until altered by law (except that) the first election under this Constitution shall be held on the second Monday in March, 1864, and the electors in all cases, except in cases of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections and in going to and returning therefrom.

DUTY OF GOVERNOR

§ 9. The Governor shall issue writs of election to fill such vacancies as shall occur in either House of the General Assembly.

§ 10. No judge of the Supreme, Circuit or inferior courts of law or equity, Secretary of State, Attorney-General of the State, District Attorneys, State Auditor or Treasurer, Register or Recorder, Clerk of any court or record, Sheriff, Coroner or member of Congress, nor any other person holding any lucrative office under the United States or this State (militia officers, Justices of the Peace, postmasters and judges of the County Courts excepted), shall be eligible to a seat in either House of the General Assembly.

§ 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either House of the General Assembly, nor to any office of trust or profit, until he shall have accounted for and paid over all sums for which he may have been liable.

§ 12. The General Assembly shall exclude from every office of trust or profit, and from the right of suffrage within this State, all persons convicted of bribery or perjury or other infamous crime.

§ 13. Every person who shall have been convicted, either directly or indirectly, of giving or offering any bribe to procure his election and appointment shall be disqualified from holding any office of trust or profit under this State; and any person who shall give or offer any bribe to procure the election appointment of any person shall, on conviction

thereof, be disqualified from being an elector, or from holding office of trust or profit under this State.

§ 14. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under this State which shall have been created, or the emoluments of which shall have been increased, during his continuance in office, except to such office as shall be filled by the election of the people.

§ 15. Each House shall appoint its own officers and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each House shall provide.

§ 16. Each House may determine the rules of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offense. They shall each from time to time publish a journal of their proceedings, except such parts as may require secrecy, and the yeas and nays upon any question shall be entered on the journal at the desire of any five members.

§ 17. The door of each house when in session or in committee of the whole shall be kept open, except in cases which may require secrecy; and each House may punish by fine and imprisonment any person not a member who shall be guilty of disrespect to the House by any disorderly or contemptuous behavior in their presence during the session; but such imprisonment shall not extend beyond the final adjournment of that session.

§ 18. Bills may originate in either house and be amended or rejected in the other, and every bill for an act shall be read three times before each House; twice at length, and in no case shall a bill be read more than twice on one day; and the vote upon the passage of any law shall in all cases be taken by yeas and nays, and by recording the same; and every bill having passed both houses shall be signed by the president of the senate and the speaker of the house of representatives.

§ 19. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses or by the separate vote of either house of the general assembly, the vote shall be taken viva voce and entered on the journal.

§ 20. The senators and representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly and for fifteen days before the

commencement and after the termination of each session, and for any speech or debate in either house they shall not be questioned in any other place.

§ 21. The members of the General Assembly shall severally receive from the public treasury compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

MANNER OF BRINGING SUIT AGAINST THE STATE

§ 22. The General Assembly shall direct by law in what courts and in what manner suits may be commenced against the State.

§ 23. The General Assembly shall not have power to pass any bill of divorce, but may prescribe by law the manner in which such cases may be investigated in the courts of justice and divorces granted.

§ 24. The governor, lieutenant-governor, secretary of state, auditor, treasurer and all judges of the supreme, circuit and inferior courts of law and equity, and the prosecuting attorneys for the state, shall be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under this state. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

§ 25. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate, and when sitting for that purpose the senators shall be on oath or affirmation to do justice according to the law and evidence. When the governor shall be tried the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and for reasonable cause which shall not be sufficient grounds for impeachment the governor shall, on the joint address of two-thirds of each branch of the legislature, remove from office the judges of the supreme and inferior courts. Provided, the cause or causes of removal be spread on the journals, and the party charged be notified of the same and heard by himself and counsel before the vote is finally taken and decided.

§ 26. The appointment of all officers not otherwise directed by this constitution shall be made in such manner as may be prescribed by law; and all officers, both civil and military, acting under the authority of this state shall, before entering on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States and of this state, and to demean themselves faithfully in office.

§ 27. No county now established by law shall ever be reduced, by the establishment of any new county or counties, to less than six hundred square miles nor to a less population than its ratio of representation in the House of Representatives, nor shall any county be hereafter established which shall contain less than six hundred square miles or a less population than would entitle each county to a member in the House of Representatives.

§ 28. The style of the laws of this state shall be: "Be it enacted by the General Assembly of the State of Arkansas."

§ 29. The state shall, from time to time, be divided into convenient districts, in such manner that the senate shall be based upon the free white male inhabitants of the state, each senator representing an equal number as nearly as practicable, and the senate shall never consist of less than seventeen nor more than thirty-three members and as soon as the senate shall meet after the first election to be held under this Constitution, they shall cause the senators to be divided by lot into two classes, nine of the first class and eight of the second, and the seats of the first class shall be vacated at the end of two years from the time of their election, and the seats of the second class at the end of four years from the time of their election, in order that one class of the senators may be elected every two years.

§ 30. An enumeration of the inhabitants of the state shall be taken under the direction of the general assembly on the first day of January, one thousand eight hundred and sixty-five, and at the end of every ten years thereafter, and the General Assembly shall, at the first session after the return of every enumeration, so alter and arrange the senatorial districts that each district shall contain, as nearly as practicable, an equal number of free white male inhabitants.

§ 31. The ratio of representation in the senate shall be fifteen hundred free white male inhabitants to each senator, until the senators amount to twenty-five in number, and then they shall be equally apportioned upon the same basis throughout the state, in such ratio as the increased number of free white male inhabitants may require, without increasing the senators to a greater number than twenty-five, until the population of the state amounts to five hundred thousand souls, and when an increase of senators takes place they shall, from time to time, be divided by lot and be classed as prescribed above.

§ 32. The House of Representatives shall consist of not less than fifty-four nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as a ratio, until the number of representatives amounts to seventy-five and when they amount to seventy-five they shall not be further increased until the

population of the state amounts to five hundred thousand souls. Provided, that each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative, and at the first session of the General Assembly after the return of every enumeration the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed.

MODE OF AMENDING THE CONSTITUTION

The General Assembly may at any time propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state three several times, at least twelve months before the next general election, and if, at the first session of the general assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution. Provided, that such proposed amendments shall be read on three several days in each house, as well when the same are proposed as when they are finally ratified.

ARTICLE V

ABOLISHMENT OF SLAVERY

§ 1. Neither slavery nor involuntary servitude shall hereafter exist in this state, otherwise than for the punishment of crime, whereof the party shall have been convicted by due process of law, nor shall any male person arrived at the age of twenty-one years, nor female arrived at the age of eighteen years, be held to serve any person as a servant under any indenture or contracts hereafter made, unless such person shall enter into such indenture or contract while in a perfect state of freedom, and on condition of a bona fide consideration received or to be received for their services.

Nor shall any indenture of any negro or mulatto hereafter made and executed out of this state, or if made in this state, where the term of service exceeds one year, be of the least validity except those given in case of apprenticeship, which shall not be for a longer term than until the apprentice shall arrive at the age of twenty-one years, if a male, or the age of eighteen years, if a female.

ARTICLE VI

EXECUTIVE DEPARTMENT

§ 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "the Governor of Arkansas."

§ 2. The governor shall be elected by the qualified electors at the time and places where they shall respectively vote for representatives.

§ 3. The returns of every election for governor, except those of the election of eighteen hundred and sixty-four, which shall be sealed and directed as ordered in the schedule appended to this constitution, shall be sealed up and transmitted to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the General Assembly. The person having the highest number of votes shall be governor, but, if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses of the General Assembly in such manner as shall be prescribed by law.

§ 4. The governor shall hold his office for the term of four years from the time of his installation and until his successor shall be duly qualified, but he shall not be eligible for more than eight years in any term of twelve years. He shall be at least thirty years of age, a native-born citizen of Arkansas, or a native-born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States, and shall have been a resident of the same at least four years next before his election.

§ 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive, within that period, any other emolument from the United States or any one of them, or from any foreign power.

§ 6. He shall be commander-in-chief of the army of this state and of the militia thereof, except when they shall be called into service of the United States.

§ 7. He may require any information in writing from the officers of the executive department on any subject relating to the duties of their respective offices.

§ 8. He may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place if that shall have become, since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the General Assembly.

§ 9. He shall, from time to time, give to the general assembly information of the state of the government and recommend to their consideration such measures as he may deem expedient.

§ 10. He shall take care that the laws be faithfully executed.

§ 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons, and he may, in the recess of the senate, respite the sentence until the end of the next general session assembly.

§ 12. There shall be a seal of this state, which shall be kept by the governor and used by him officially.

§ 13. All commissions shall be in the name and by the authority of the State of Arkansas, be sealed with the seal of this state, signed by the governor and attested by the secretary of state.

§ 14. There shall be elected a secretary of state by the qualified voters of the state, who shall continue in office during the term of four years and until his successor in office be duly qualified; he shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before the general assembly, and shall perform such other duties as may be required by law.

§ 15. Vacancies that may happen in offices the election of which is vested in the General Assembly shall be filled by the governor, during the recess of the general assembly, by granting commissions which shall expire at the end of the next session.

§ 16. Vacancies that may occur in offices the election to which is vested in the people, within less than one year before the expiration of their term, shall be filled by the governor granting commissions, which shall expire at the end of the next term; but if one year or a longer period remains unexpired at the time of the vacancy, then and in that case the governor shall order an election to be held to fill the vacancy.

§ 17. Every bill which shall have passed both houses shall be presented to the governor. If he approve it he shall sign it; but if he shall not approve it he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objection, to the other house, by which, likewise it shall be reconsidered; and if approved by a majority of the whole number elected to that house it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays and the names of the persons voting for or against the bill shall be

entered on the journals of each house respectively. If any bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in such case it shall not be a law.

§ 18. Every order or resolution to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

§ 19. A lieutenant-governor shall be chosen at every election for governor in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant-governor the electors distinguish for whom they vote as governor and for whom as lieutenant-governor.

§ 20. He shall, by virtue of his office, be president of the senate, have a right when in committee of the whole to debate, and whenever the senate are equally divided shall give the casting vote.

§ 21. Whenever the government shall be administered by the lieutenant-governor, he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president of the senate for that occasion, and if, during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, or resign, or die, or be absent from the state, the president of the senate shall in like manner administer the government.

§ 22. The lieutenant-governor while he acts as president of the senate shall receive for his services the same compensation which shall for the same period be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor he shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

§ 23. In case of an impeachment of the Governor, his removal from office, death, refusal to qualify, resignation or absence from the State, the Lieutenant-Governor shall exercise all the power and authority appertaining to the office of Governor, until the time pointed out by this Constitution for the election of a Governor shall arrive, unless the General Assembly shall provide by law for the election of Governor to fill such vacancy.

§ 24. The Governor shall always reside at the seat of government.

§ 25. No person shall hold the office of Governor or Lieutenant-Governor and any other office or commission, civil or military, either in this State or under any State, or the United States, or any other power, at one and the same time.

§ 26. There shall be elected by the qualified voters of this State an Auditor and Treasurer for this State, who shall hold their offices for the terms of two years, and until their respective successors are elected and qualified, unless sooner removed; and shall keep their respective offices at the seat of government and perform such duties as such vacancy shall be filled by the Governor as in other cases.

MILITIA

§ 1. The militia of this State shall be divided into convenient divisions, brigades, regiments and companies and officers of corresponding titles and rank elected to command them, conforming as nearly as practicable to the general regulations of the army of the United States; and all officers shall be elected by those subject to military duties in their several districts, except as hereinafter provided.

§ 2. The Governor shall appoint the adjutant-general and other members of his staff, and major-generals, brigadier generals and commanders of regiments shall respectively appoint their own staff; and all commissioned officers may continue in office during good behavior, and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VII

JUDICIAL DEPARTMENT

§ 1. The judicial power of this State shall be vested in one Supreme Court, in Circuit Courts, in County Courts and in Justices of the Peace. The General Assembly may also vest such jurisdiction as may be deemed necessary in corporation courts, and when they deem it expedient, may establish Courts of Chancery.

§ 2. The Supreme Court shall be composed of three judges, one of whom shall be styled Chief Justice, any two of whom shall constitute a quorum, and the concurrence of any two said judges shall in every case be necessary to a decision.

The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations as may from time to time be prescribed by law.

It shall have a general superintending control over all inferior and other courts of law and equity. It shall have power to issue writs of error, supersedeas, certiorari and habeas corpus, mandamus and quo warranto and other remedial writs, and to hear and determine the same. Said judges shall be conservators of the peace throughout the State, and shall have power to issue any of the aforesaid writs.

§ 3. Circuit court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony at the common law, and original jurisdiction of all civil cases which shall not be cognizable before Justices of the Peace, until otherwise directed by the General Assembly, and original jurisdiction in all matters of contract where the sum in controversy is over is over two hundred dollars. It shall hold its terms at such places in each county as may be by law directed.

§ 4. The State shall be divided into convenient circuits, each to consist of not less than five nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

§ 5. The Circuit Court shall exercise a superintending control over the County Courts and over Justices of the Peace in each county in their respective circuits, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

§ 6. Until the General Assembly shall deem it expedient to establish Courts of Chancery, the Circuit Court shall have jurisdiction in matters of equity, subject to appeal to the Supreme Court, in such manner as may be prescribed by law.

§ 7. The qualified voters of this State shall elect the judges of the Supreme Court. The judges of the Supreme Court shall be at least thirty years of age; they shall hold their office during the term of eight years from date of their commissions, and until their successors are elected and qualified.

Immediately after such election by the people, the Lieutenant-Governor and Speaker of the House of Representatives shall proceed by lot to divide the judges into three classes. The commissions of the first class shall expire at the end of four years, of the second class at the end of six years, and of the third class at the end of eight years, so that one-third of the whole number shall be chosen every four, six and eight years.

§ 8. The qualified voters of each judicial district shall elect a Circuit Judge. The judges of the Circuit Court shall be at least twenty-five

years of age, and shall be elected for the term of four years from the date of their commissions, and shall serve until their successors are elected and qualified.

§ 9. The Supreme Court shall appoint its own clerk or clerks for the term of four years; the qualified voters of each county shall elect a clerk of the Circuit Court for the respective counties, who shall hold his office for the term of two years and until his successor is elected and qualified, and Courts of Chancery, if any be established, shall appoint their own clerks.

§ 10. The judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected; they shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this State or the United States. The Attorney-General, the State's attorneys and clerks of the Supreme and Circuit Courts and Courts of Chancery, if any such be established, shall receive for their services such salaries, fees and perquisites of office as shall, from time to time, be fixed by law.

§ 11. There shall be established in each county in the State a court to be holden by the Justices of the Peace — a court called the County Court — which shall have jurisdiction in all matters relating to taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of respective counties.

§ 12. The qualified voters of each county shall elect a County and Probate Judge, who shall hold his office for two years and until his successor is elected and qualified. He shall in addition to the duties that may be required of him by law as a presiding judge of the County Court, be a judge of the Court of Probate, and have such jurisdiction in matters relating to the estates of deceased persons, executors, administrators and guardians as may be prescribed by law, until otherwise directed by the General Assembly.

§ 13. The presiding judge of the Probate and County Court and Justices of the Peace shall receive for their services such compensation and fees as the General Assembly may from time to time, by law direct.

§ 14. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been counseled, or have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the Supreme Court shall be thus disqualified from presiding on any cause or causes, the court or judges

thereof shall certify the same to the Governor of the State, and he shall immediately commission, specially, the requisite number of men of law knowledge for the trial and determination thereof. The same course shall be pursued in the Circuit and inferior courts as prescribed in this section for cases of the Supreme Court. Judges of the Circuit Courts may temporarily exchange circuits or hold courts for each other under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

§ 15. The qualified voters thereof shall elect an attorney for the State for each judicial circuit established by law, who shall continue in office two years and until his successor is elected and qualified, and reside within the circuit for which he was elected at the time of and during his continuance in office. In all cases where an attorney for the State of any circuit fails to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore.

§ 16. The qualified voters of this State shall elect an Attorney-General, whose salary shall be the same as that of Circuit Judge, who shall be learned in the law, who shall be at least thirty years of age, and shall hold his office for the term of four years from the date of his commission and until his successor is elected and qualified, and whose duty it shall be to prosecute the State's pleas before the Supreme Court, and give his opinion in writing on all questions of law or equity when required by the Governor or other officer of the State, and perform such other duties as may be prescribed by law.

§ 17. All writs and other process shall run in the name of the "State of Arkansas," and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

§ 18. The qualified voters residing in each township shall elect the justices of the peace for each township. For every one hundred voters there may be elected one Justice of the Peace. Provided, that each township, however small, shall have two Justices of the Peace. Justices of the Peace shall be elected for the term of two years, and shall hold their offices until their successors are elected and qualified; shall be commissioned by the Governor, and shall reside in the township for which they are elected during their continuance in office. The first election for Justices of the Peace shall take place on the second Monday in March, 1864, and the second election on the first Monday in August, 1866, and at the regular elections thereafter. Justices of the Peace, individually, or two or more of them jointly, shall have original jurisdiction in cases of bastardy and in all matters of contract and actions for the recovery of fines and forfeitures where the amount claimed does not exceed two hundred dollars, and concurrent jurisdiction with Circuit

Courts where the amount claimed exceeds one hundred dollars and does not exceed two hundred dollars, and such jurisdiction as may be provided by law in actions ex delicto where the damages claimed do not exceed one hundred dollars, and prosecutions for assault and battery and other penal offenses less than felony punishable by fine only. Every action cognizable before a Justice of the Peace, instituted by summons or warrants, shall be brought before some Justice of the Peace of the township where the defendant resides. They may also sit as examining courts, and commit, discharge or recognize any person charged with any crime of any grade. For the foregoing purposes, they shall have power to issue all necessary process. They shall also have power to bind to keep the peace or for good behavior.

§ 19. The qualified voters of each township shall elect one constable for the term of two years, who shall hold his office till his successor is elected and qualified, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate Constable and a separate magistracy.

§ 20. The qualified voters of each county shall elect one Sheriff, one Coroner and one County Surveyor for the term of two years and until their successors are elected. They shall be commissioned by the Governor, reside in their respective counties during their continuance in office and be disqualified for the office a second term if it should appear that they, or either of them, are in default for moneys collected by virtue of their respective offices.

ARTICLE VIII

GENERAL PROVISIONS — EDUCATION

§ 1. Knowledge and learning generally diffused throughout a community being essential to the preservation of a free government, and diffusing the opportunities and advantages of education through the various parts of the State being highly conducive to this end, it shall be the duty of the General Assembly to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this State for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are, or may be, intended. The General Assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures and natural history, and countenance and encourage the principles of humanity, industry and morality.

§ 2. Treason against the State shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No

person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or his own confession in open court.

§ 3. No person who denies the being of God shall hold any office in the civil department of this State or be allowed his oath in any court.

§ 4. No money shall be drawn from the treasury but in the consequence of any appropriation by law, nor shall any appropriation of money for the support of the army be made for a longer term than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

§ 5. Absence on business of this State or of the United States, or on a visit or necessary private business, shall not cause a forfeiture of a residence once obtained.

§ 6. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

§ 7. Internal improvements shall be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals, and navigable waters and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

§ 8. Returns for all elections for officers who are to be commissioned by the Governor, and for members of the General Assembly, shall be made to the Secretary of State, except, in the election of 1864, they may be made as directed in the schedule appended to this Constitution.

§ 9. Within five years after the adoption of this Constitution the laws, civil and criminal, shall be revised, digested and arranged and promulgated in such manner as the General Assembly may direct, and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

§ 10. In the event of the annexation of any territory to this State by a cession from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this Constitution to the contrary notwithstanding.

§ 11. Imprisonment for debt shall not be allowed in this State except when an allegation of fraud on the part of the debtor shall be clearly proved.

§ 12. Any person who shall, after the adoption of this Constitution, fight a duel or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of suffrage and of the right of holding any office of honor or profit in this State, and shall be punished otherwise in such manner as is, or may be, prescribed by law.

ARTICLE IX

REVENUE

§ 1. All revenue shall be raised by taxation to be fixed by law.

§ 2. All property subject to taxation shall be taxed according to its value, that value to be ascertained in such a manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value. Provided, the General Assembly shall have the power to tax merchants, hawkers, peddlers and privileges in such manner as may from time to time be prescribed by law; and provided, further, that no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both Houses of the General Assembly.

§ 3. No poll-tax shall be assessed for other than county purposes.

§ 4. No other or greater tax shall be levied on the productions of labor of the country than may be required for expenses of inspection.

SCHEDULE

§ 1. In order that civil government may be in full operation and effect at the earliest day possible, it is further ordained and provided that a general vote on the ratification of the Constitution and ordinances of this convention and a general election shall be taken and held throughout the State, as far as practicable, on the second Monday of March next, as follows, to wit: Any number of persons, being white male citizens of the State over the age of twenty-one years, at the county seat of any county, or (in case of volunteer soldiers in the federal army) at the camp of their respective companies, having first taken the oath prescribed in the President's proclamation of December 8, 1863, before any Justice of the Peace or other person authorized to administer an oath within the county in which they reside, or within which they are encamped, may appoint a commissioner of elections, with power to appoint such election judges as may be necessary, who shall also be an enrolling officer for said county or company, who shall proceed as follows, to wit: Said commissioners shall prepare an enrolling and

poll-book, to which shall be appended the Constitution, ordinances and schedule of this convention. One column shall then be headed with the oath contained in said proclamation of the President; another column headed, "Constitution and ordinances ratified"; another column, "Constitution and ordinances rejected." Other columns shall be arranged so that a vote may be taken for all officers to be voted for within the county or company where the election is proposed to be held. Said commissioner shall then take the oath aforesaid before any Justice of the Peace or other officer authorized to administer oaths, and enroll his own name at the head of the column, under the said oath written out in full. The said commissioner shall then, on the said second Monday of March next, within usual election hours, proceed to hold an election as follows: viva voce; and provided, also, that said commissioner may keep the polls open for three days, to wit: Every white male citizen over the age of twenty-one years, of the county or (in case of a military company) of the State, presenting himself to vote, and not being included in the exceptions contained in the said proclamation, shall take the oath contained in said proclamation, administered by any Justice of the Peace or other officer authorized to administer oaths; and when his name has been thereafter duly enrolled or subscribed in the proper column, the commissioner shall cause his vote to be recorded first upon the question of the Constitution and ordinances, and then in the election of all officers to be voted for.

§ 2. That within five days after the holding of said election said commissioner shall foot up the said vote and certify the result over his signature as commissioner. He shall then make a duplicate of said book (except that the Constitution and ordinances of this convention need not be appended to the copy), and forward the said copy to Little Rock, addressed to the provisional government. The original book shall be preserved by said commissioner and deposited by him as soon as the counties are organized with the clerk of the county wherein the election is held, or (in case of soldiers) in the county wherein the voters reside.

§ 3. Within ten days after the receipt of said enrolling and election return-books by the provisional Governor, it shall be his duty, with the assistance of the Secretary of State, to examine the same and declare the result by proclamation, as follows, to wit:

First. Whether the Constitution and ordinances of this convention have been adopted or rejected within the meaning of the President's proclamation.

Second. He shall announce the whole vote polled for or against said Constitution and ordinances.

Third. He shall declare what persons are elected to the various offices throughout the State, except that of Governor and Lieutenant-Governor of State, deciding the result by plurality.

§ 4. All persons thus declared to be elected State officers shall enter upon the discharge of their respective offices as soon thereafter as they

take and subscribe an oath before any Justice of the Peace, or other officer authorized to administer oaths, as follows: That they will faithfully perform the duties of their respective offices; that they will support the Constitution and laws of the State and of the United States; and said oath, in case of State officers, shall be filed in the office of the Secretary of State; and in case of county officers, they shall enter upon the duties of their respective offices immediately after the election upon filing said oath with the commissioners.

§ 5. At the first session of the Legislature, and during the first week of the session, the said provisional Government shall place the said return books before that body, who shall declare the result as to the election of Governor and Lieutenant-Governor and Secretary of State, who, before entering upon the duties of their respective offices, shall take the oath herein prescribed for other officers.

§ 6. It is also further ordained and declared that in counties wherein, for any cause, elections are not held on the said second Monday of March next, the same may be held for the several local officers provided for in the Constitution, ordinances and schedule of this convention in the same manner as hereinbefore described, at any time thereafter, till the whole State is fully organized and represented.

§ 7. The officers to be voted for in this election are Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Attorney-General, three Judges of the Supreme Court, nine Circuit Judges and nine District Attorneys (according to act of January 15, 1861), County Judges, Clerks, Sheriffs, Coroners, Constables, Justices of the Peace and all other officers provided for in the Constitution and ordinances of this convention, or which may exist by law, and members of the Legislature, according to the ratio or apportionment of senatorial districts in force in the year 1860, and members of Congress in Districts Nos. 1 and 2, according to the act approved January 19, 1861, (no election being ordered in District No. 3, this convention recognizing the election of Colonel James M. Johnson as the representative from that district). And it is further hereby declared that all laws in force in this State on the fourth day of March, 1861, are still in force, not inconsistent with the provisions of this Constitution, and which have not expired by limitation therein contained.

JOHN McCOY,
President of the Convention, and Delegate from Newton County.

LUTHER C. WHITE,
Crawford County.
C. A. HARPER,
Crawford County.
JOHN AUSTIN,
Crawford County.

C. T. JORDAN,
Clark County.
JOHN BURTON,
Clark County.
JOHN C. PRIDDY,
Montgomery County.

JOSIAH HARRELL,
Crawford County.
HARMON L. HOLLEMAN,
Sebastian County.
JNO. R. SMOOT,
Sebastian County.
RANDOLPH D. SWINDELL,
Sebastian County.
G. W. SEAMANS,
Madison County.
JAMES T. SWAFFORD,
Saline County.
W. HOLLEMAN,
Saline County.
JOHN M. DEMINT,
Saline County.
ENOCH H. VANCE,
Saline County.
MILES L. LANGLEY,
Clark County.
J. M. STAPP,
Clark County.
HORACE B. ALLIS,
Jefferson County.
JOHN BOX,
Jackson County.
CALVIN C. BLISS,
Independence County.
A. B. FRYREAR,
St. Francis County.
LEMUEL HELMS,
Sevier County.
R. L. TURNER,
Ouachita County.

PEUBEN LAMB,
Montgomery County.
E. D. AYRES,
Pulaski County.
T. D. W. YONLEY,
Pulaski County.
E. L. MAYNARD,
Pulaski County.
WILLIAM STOUT,
Pope County.
BURKE JOHNSON,
Yell County.
ELIAS G. COOK,
Yell County.
L. D. CANTRELL,
Pike County.
WILLIS JONES,
Pike County.
JAMES A. BUTLER,
Phillips County.
T. M. JACKS,
Phillips County.
THOMAS J. YOUNG,
Polk County.
JAMES HUEY,
Polk County.
ANDREW G. EVANS,
Dallas County.
R. H. STANFIELD,
Dallas County.
WILLIAM COX,
Drew County.
L. DUNSCOMB,
Conway County.

Attest: ROBERT J. T. WHITE, Secretary.
JAMES R. BERRY, Assistant Secretary.

CONSTITUTION OF THE STATE OF ARKANSAS OF 1868

PREAMBLE

We, the people of Arkansas, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and to our posterity, do ordain and establish this Constitution:

ARTICLE I

BILL OF RIGHTS

§ 1. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it; but the paramount allegiance of every citizen is due to the federal government in the exercise of all its constitutional powers as the same may have been or may be defined by the Supreme Court of the United States; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the United States. The Constitution of the United States confers full powers on the federal government to maintain and perpetuate its existence; and whensoever any portion of the States, or the people thereof attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the federal government may by warrant of the Constitution employ armed force in compelling obedience to its authority.

§ 2. The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions is one of the invaluable rights of man, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel the truth may be given in evidence to the jury, and, if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

§ 3. The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition.

§ 4. The citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives and to petition for the redress of grievances and other proper purposes.

§ 5. The citizens of this State shall have the right to keep and bear arms for their common defense.

§ 6. The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy; but a jury may be waived by the parties in all cases in the manner prescribed by law.

§ 7. Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted; nor witnesses be unreasonably detained.

§ 8. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or judicial district wherein the crime shall have been committed — which county or district shall have been previously ascertained by “law, — and” to be informed of the nature and cause of the accusations against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel of his defense.

§ 9. No person shall be held to answer a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment or in case of petit larceny, assault, assault and battery, affray, vagrancy and such other minor cases as the General Assembly shall make cognizable by Justices of the Peace, or arising in the army or navy of the United States, or in the militia when in actual service in time of war or public danger; and no person, after having been once acquitted by a jury for the same offense, shall be again put in jeopardy of life or liberty; but, if in any criminal prosecution the jury is divided in opinion, the court before which the trial may be had may, in its discretion, discharge the jury and commit or bail the accused for trial at the same or next term of said court; nor shall any person be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses — murder and treason — when the proof is evident or the presumption is great; and the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require.

§ 10. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformably to the laws.

§ 11. Treason against the State shall only consist in levying war against the same or in adhering to its enemies, giving them aid and

comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

§ 12. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

§ 13. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

§ 14. No person shall be imprisoned for debt in this State, but this shall not prevent the General Assembly from providing for imprisonment or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of debts or liabilities.

§ 15. Private property shall not be taken for public use without just compensation therefor.

§ 16. The military shall be subordinate to the civil power. No standing army shall be kept up in this State in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

§ 17. Suits may be brought by or against the State in such manner and in such courts as may be by law provided.

§ 18. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

§ 19. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influence from bribery, tumult or other improper conduct.

§ 20. Foreigners who are or may become bona fide resident of this State shall be secured the same rights in respect to the acquisition, possession, enjoyment and descent of property as are secured to native-born citizens.

§ 21. No religious test or amount of property shall ever be required as a qualification for any office or public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter or at any election in this State; nor shall any

person be rendered incompetent to give evidence in any court at law or equity in consequence of his opinion upon the subject of religion; and the mode of administering an oath or affirmation shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

§ 22. Any person who shall, after the adoption of this Constitution, fight a duel or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, either in this State or elsewhere, shall thereby be deprived of the right of holding any office of honor or profit in this State, and shall forever be disqualified from voting at any election, and shall be punished otherwise in such manner as may be prescribed by law.

§ 23. Religion, morality and knowledge being essential to good government, the General Assembly shall pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

§ 24. All lands in this State are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of land for a longer period than twenty-one years hereafter made, in which shall be reserved any rent or service of any kind, shall be held a conveyance in fee to the lessee.

§ 25. The action of the convention of the State of Arkansas which assembled in the city of Little Rock on the fourth (4th) day of March A.D. one thousand eight hundred and sixty-one (1861), was and is null and void. All action of the State of Arkansas under the authority of said convention, of its ordinances or its constitution, whether legislative, executive, judicial or military, was and is hereby declared null and void; and no debt or liability of the State of Arkansas incurred by the action of said convention or of the General Assembly, or any department of the government under the authority of either, shall ever be recognized as obligatory. Provided, That this ordinance shall not be so construed as to affect the rights of private individuals arising under contracts between the parties, or to change county boundaries or county seats, or to make invalid the acts of Justices of the Peace or other officers in their authority to administer oaths or take and certify the acknowledgment of deeds of conveyance or other instruments of writing, or in the solemnization of marriage.

ARTICLE II

BOUNDARIES

We do declare and establish, ratify and confirm the following as the permanent boundaries of said State of Arkansas, that is to say:

Beginning at the middle of the main channel of the Mississippi River on the parallel of thirty-six (36) degrees north latitude; running from thence west with the said parallel of latitude to the Saint Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six (36) degrees thirty (30) minutes north; from thence west with the boundary line of the State of Missouri to the southwest corner of that State; and thence to be bounded on the west to the north bank of Red River, as by acts of Congress and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river, including an island in said river, known as "Belle Point Island," to the thirty-sixth (36th) degree of north latitude, the place of beginning.

ARTICLE III

THE SEAT OF GOVERNMENT SHALL BE AT LITTLE ROCK, WHERE IT IS NOW ESTABLISHED.

ARTICLE IV

§ 1. The powers of government are divided into three departments — the legislative, the executive and the judicial.

§ 2. No person belonging to one department shall exercise the powers properly belonging to another, excepting in the cases expressly provided in this Constitution.

ARTICLE V

LEGISLATIVE DEPARTMENT

§ 1. The legislative power in this State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

§ 2. The General Assembly shall meet every two years on the first Monday of January, at the seat of government, until altered by law; but the first General Assembly elected after the adoption of this Constitution shall meet on the second (2d) day of April, A. D. one thousand eight hundred and sixty-eight (1868).

§ 3. The House of Representatives shall consist of members chosen every second year by the qualified electors of the several districts.

§ 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years and have been

one year a resident of this state; who shall not be a male citizen of the United States; who shall not at the time of his election have an actual residence in the district he may be chosen to represent, and who shall not be a qualified elector as provided in this Constitution.

§ 5. The Senate shall consist of members chosen every fourth year by the qualified electors of the several districts.

§ 6. No person shall be a member of the Senate who shall not have attained the age of twenty-five years and have been one year a resident of this State; who shall not be a male citizen of the United States; who shall not at the time of his election have an actual residence in the district he may be chosen to represent, and who shall not be a qualified elector as provided in this Constitution.

§ 7. The number of members composing the Senate shall be twenty-six (26), and of the House of Representatives eighty-two (82).

§ 8. The General Assembly shall provide by law for an enumeration of the inhabitants of this State in the year one thousand eight hundred and seventy-five (1875), and every tenth (10th) year thereafter; and the first General Assembly elected after each enumeration so made, and also after each enumeration made by the authority of the United States, may rearrange the senatorial and representative districts according to the number of inhabitants as ascertained by such enumeration. Provided, that there shall be no apportionment other than that made in this Constitution until after the enumeration to be made in the year one thousand eight hundred and seventy-five (1875).

§ 9. Senators shall be chosen at the same time and in the same manner that members of the House of Representatives are required to be. Senatorial districts shall be composed of convenient contiguous territory, and no representative district shall be divided in the formation of a senatorial one. The senatorial districts shall be numbered in regular series, and the term of Senators chosen for the districts designated by odd numbers shall expire in two (2) years, and the terms of Senators chosen for the district designated by even numbers shall expire in four (4) years; but thereafter Senators shall be chosen for the term of four (4) years, excepting when an enumeration of the inhabitants of the State is made, in which case, if a rearrangement of the senatorial districts is made, the regulation above stated shall govern the term of office.

§ 10. Removals of Senators and Representatives from their respective districts shall be deemed a vacation of their office.

§ 11. No person holding any office under the United States, or this State, or any county office, except postmasters, notaries public, officers

of the militia and township officers shall be eligible to or have a seat in either branch of the General Assembly, and all votes given for any such person shall be void.

§ 12. Senators and Representatives shall, in all cases (treason, felony or breach of the peace excepted), be privileged from arrest during the session of the General Assembly. They shall not be subject to any civil process during the session of the General Assembly or for fifteen days next before the commencement and next after the termination of each session. And they shall not be questioned in any other place for remarks made in either House.

§ 13. A majority of the members of each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each House may prescribe.

§ 14. Each House shall choose its own officers, determine the rules of its proceedings, judge of the qualifications, election and return of its members, and may, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents at the time of his election. The reasons for any such expulsion shall be entered upon the journal with the names of the members voting thereon.

§ 15. The General Assembly shall prescribe by law the manner in which the State printing shall be executed and the accounts rendered therefor, and shall prohibit all charges for constructive labor. They shall not rescind or alter any contract for such printing, or release the person or persons taking the same, or his or their securities, from the performance of any of the provisions of such contract.

§ 16. Each House shall keep a journal of its proceedings, and publish the same, excepting such parts as may require secrecy. The yeas and nays of the members of either House upon any question shall be entered on the journal at the request of five members. Any member of either House may dissent and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

§ 17. In all elections by either House, or in joint convention, the votes shall be given viva voce. All votes on nomination to the Senate shall be taken by yeas and nays, and published with the journal of its proceedings.

§ 18. The doors of each house shall be open, unless the public welfare requires secrecy. Neither House shall, without the consent of

the other, adjourn for more than three days, nor to any other place than where the General Assembly may then be in session.

§ 19. Bills may originate in either House of the General Assembly, but all bills for raising revenue shall originate in the House of Representatives, though the Senate may propose amendments, as on other bills.

§ 20. No portion of the public funds or property shall ever be appropriated by virtue of any resolution. No appropriation shall be made except by a bill duly passed for that purpose.

§ 21. Every bill and joint resolution shall be read three times, on different days, in each House before the final passage thereof, unless two-thirds of the House where the same is pending shall dispense with the rules. No bill or joint resolution shall become a law without the concurrence of a majority of all the members voting. On the final passage of all bills the vote shall be taken by yeas and nays and entered on the journal.

§ 22. No act shall embrace more than one subject, which shall be embraced in its title. No public act shall take effect or be in force until ninety (90) days from the expiration of the session at which the same is passed, unless it is otherwise provided in the act.

§ 23. No law shall be revised, altered or amended by reference to its title only, but the act revised and the section or sections of the act as altered or amended shall be enacted and published at length.

§ 24. No new bill shall be introduced in either House during the last three days of the session without the unanimous consent of the House in which it originated.

§ 25. The General Assembly, at its first session, shall provide suitable laws for the registration of qualified electors and for the prevention of frauds in elections.

§ 26. The General Assembly shall provide for the speedy publication of all statute laws of a public nature, and of such judicial decisions as it may deem expedient. All laws and judicial decisions shall be free for publication by any person.

§ 27. The style of the laws of the State shall be: "Be it enacted by the General Assembly of the State of Arkansas."

§ 28. The General Assembly may enact laws providing for county, township or precinct governments.

§ 29. It shall be the duty of the General Assembly, from time to time, as circumstances may require, to frame and adopt a penal code, founded on principles of reformation.

§ 30. The General Assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

§ 31. The General Assembly may pass laws authorizing appeals in criminal or penal cases and regulating the right of challenge of jurors therein.

§ 32. The General Assembly shall direct by law when and how juries shall be selected from judicial districts in criminal and civil cases.

§ 33. The General Assembly shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

§ 34. The General Assembly may declare the cases in which any office shall be deemed vacant, and also for the manner of filling the vacancy where no provision is made for that purpose of this Constitution.

§ 35. Every bill and concurrent resolution, except the adjournment, passed by the General Assembly shall be presented to the Governor for approval before it becomes a law. If he approve, he shall sign it; if not, he shall return it with his objections to the House in which it originated, which shall enter the objections at large upon its journal, and reconsider it. On such reconsideration, if a majority of the members elected agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall be reconsidered. If approved by a majority of the members elected to that House it shall become a law. In such cases the vote of both Houses shall be determined by yeas and nays, and the names of members voting for and against the bill shall be entered on the journal of each House respectively. If any bill be not returned by the Governor within three (3) days (Sundays excepted) after it has been presented to him, the same shall become a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not become a law. The Governor may approve, sign and file in the office of the Secretary of State, within three (3) days after the adjournment of the General Assembly, any act passed during the last three (3) days of the session, and the same shall become a law.

§ 36. Each House may punish by imprisonment, during its session, any person not a member who shall be guilty of any disorderly or

contemptuous behavior in their presence; but no such imprisonment shall at any time exceed twenty-four (24) hours.

§ 37. No citizen of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless the same is done by the law of the land, or the judgment of his peers, except as hereinafter provided. There shall be neither slavery nor involuntary servitude, either by indentures, apprenticeships, or otherwise, in the State, except for the punishment of crime, whereof the party shall have been duly convicted.

§ 38. The General Assembly shall have no power to make compensation for emancipated slaves.

§ 39. The General Assembly shall have no power to grant divorces, to change the names of individuals, or to direct the sale of estates belonging to infants or other persons laboring under legal disabilities, by special legislation; but, by general laws, shall confer such powers on the courts of justice.

§ 40. The General Assembly shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person, or vacate or alter any road laid out by legal authority, or any street in any city or village, or in any recorded town plat; but shall provide for the same by general laws.

§ 41. The General Assembly shall not authorize any lottery, and shall prohibit the sale of lottery tickets.

§ 42. In case of a contested election, only the claimant decided entitled to the seat, in either House in which the contest may take place, shall receive from the state per diem, compensation and mileage.

§ 43. No collector, holder or disburser of public moneys shall have a seat in the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid over, as provided by law, all sums for which he is liable.

§ 44. The General Assembly shall have power to alter and regulate the jurisdiction and proceedings in law and equity, subject to the provisions of this Constitution.

§ 45. The General Assembly shall direct by law in what manner and in what courts suits may be brought by and against the State.

§ 46. It shall be the duty of the General Assembly to make adequate provision for the maintenance of paupers throughout the State.

§ 47. The General Assembly shall not have power to authorize any municipal corporation to pass any laws contrary to the general laws of the State, or to levy any tax on real or personal property to a greater extent than two (2) per centum of the assessed value or the same.

§ 48. The General Assembly shall pass no special act conferring corporate powers. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Dues from corporations shall be secured by such individual liability of the stockholders, and other means, as may be prescribed by law; but in all cases each stockholder shall be liable over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men in a court of record, as shall be prescribed by law.

§ 49. The General Assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power.

§ 50. All corporations with banking and discounting privileges shall, preparatory to issuing bills as currency, deposit the bonds of this State, equal in amount to the capital stock of such corporation, with the Auditor of the State, who shall not permit an issue of circulation exceeding eighty per centum of the amount of bonds so deposited, such circulation being receivable for all taxes and dues to the State, and the individual liability of stockholders shall be as hereinbefore directed. Provided, that corporations chartered or existing under any act of the Congress of the United States shall be exempted from these provisions.

§ 51. The General Assembly, on the day of final adjournment, shall adjourn at twelve o'clock at noon.

ARTICLE VI

EXECUTIVE DEPARTMENT

§ 1. The executive department of this State shall consist of a Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Attorney-General and Superintendent of Public Instruction — all of whom shall hold their several offices for the term of four years, and until their successors are elected and qualified. They shall be chosen by

the qualified electors of this State at the time and places of choosing the members of the General Assembly.

§ 2. The supreme executive power of this State shall be vested in the Governor.

§ 3. No person shall be eligible to the office of Governor or Lieutenant-Governor who shall not have attained the age of twenty-five years; who shall not have been five years a citizen of the United States; who shall not, at the time of his election, have had an actual residence in this State for one year next preceding his election, and who shall not be a qualified elector as prescribed in this Constitution.

§ 4. In elections for Governor and Lieutenant-Governor, the person having the highest number of votes shall be declared elected. But, in case that two or more persons shall have an equal and the highest number of votes for Governor or Lieutenant-Governor, the General Assembly, by joint vote, choose one of such persons. The Governor shall be commander-in-chief of the military and naval forces of the State, and may call out such forces to execute the laws, suppress insurrections, repel invasions or preserve the public peace. He shall transact all necessary business with other officers of the State government and may require information in writing of the officers of the executive department upon any subject pertaining to the duties of their respective offices.

§ 5. It shall be the duty of the Governor to see that the laws are faithfully executed.

§ 6. He may convene the Legislature on extraordinary occasions.

§ 7. He shall give to the General Assembly, and at the close of his official term to the next General Assembly, information by message concerning the condition of the State, and recommend such means to their consideration as he may deem expedient.

§ 8. He may convene the General Assembly at some other place when the seat of government becomes dangerous from the prevalence of disease or the presence of a common enemy.

§ 9. He may grant reprieves, pardons and commutations after conviction for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper; subject, however, to such regulations as may be prescribed by law relative to the manner of applying for pardons. Upon conviction for treason he may suspend execution of the sentence until the matter shall be reported to the General Assembly at its next session, when the General Assembly shall either pardon, commute the

sentence, direct the execution of the same, or grant a further reprieve. The Governor shall communicate to the General Assembly, at each session, information concerning each case of pardon, reprieve or commutation granted, and the reasons therefor.

§ 10. In case of the impeachment of the Governor, his removal from office, death, resignation, inability, or removal from the State, the powers and duties of the Governor shall devolve upon the Lieutenant-Governor during the residue of the term or until the disabilities of the Governor are removed.

§ 11. During a vacancy in the office of Governor, if the Lieutenant-Governor resign, be impeached, displaced, absent from the State, or incapable of acting, the President pro tempore of the Senate shall act as Governor until the vacancy be filled or the disability cease.

§ 12. The Lieutenant-Governor shall, by virtue of his office, be President of the Senate, and when there is an equal division he shall give the casting vote.

§ 13. No member of Congress or any other person holding any office under the United States or this State shall execute the office of Governor.

§ 14. The Lieutenant-Governor and the President of the Senate pro tempore while performing the office of Governor, shall receive the same compensation as the Governor.

§ 15. All official acts of the Governor — his approval of the laws excepted — shall be authenticated by the great seal of the State, which seal shall be kept by the Secretary of State.

§ 16. The Governor shall, by and with the advice and consent of the Senate, appoint a convenient number of notaries public, not to exceed six for each county, who shall discharge such duties as are now, or as may hereafter be, prescribed by law.

§ 17. All commissions issued to persons holding office under the provisions of this constitution shall be in the name and by the authority of the people of the State of Arkansas, sealed with the great seal of the State, signed by the Governor and countersigned by the Secretary of State.

§ 18. The Governor, Chief Justice, Secretary of State, Treasurer, Auditor, Attorney-General and Superintendent of Public Instruction shall severally reside and keep all public records, books, papers and documents which may pertain to their respective offices at the seat of government.

§ 19. The returns of every election for Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Attorney-General and Superintendent of Public Instruction shall be sealed up and transmitted to the seat of government by the returning officers and directed to the presiding officer of the Senate, who, during the first week of the session, shall open and publish the same in the presence of the members then assembled. The person having the highest number of votes shall be declared elected, but, if two or more shall have the highest and equal number of votes for the same office, one of them shall be chosen by a joint vote of both Houses. Contested elections shall likewise be determined by both Houses of the General Assembly in such manner as it may hereafter be prescribed by law.

§ 20. The Secretary of State shall keep a fair record of all official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the General Assembly, and shall perform such other duties as are now or may hereafter be prescribed by law.

§ 21. The Auditor, Treasurer, Attorney-General and Superintendent of Public Instruction shall perform such duties as are now or may hereafter be prescribed by law.

§ 22. In case of the death, impeachment, removal from the State or other disability of the Secretary of State, Treasurer, Auditor, Attorney-General and Superintendent of Public Instruction, the vacancies in their several offices thus occasioned shall be filled by appointment of the Governor, which appointment shall be made for the unexpired terms of said officers, or until said disabilities are removed, or until elections are held to fill said vacancies.

§ 23. Until the General Assembly shall otherwise provide the Governor shall appoint a suitable person who shall be styled Commissioner of Public Works and Internal Improvements, who shall hold his office for the term of four years and until his successor is duly commissioned and qualified. It shall be the duty of the Commissioner of Public Works and Internal Improvements to superintend all public works which may be carried on by the State, and having a supervising control over all internal improvements in which the State is interested; and, until otherwise provided by the General Assembly, he shall be ex officio Commissioner of Immigration and of State Lands, and shall perform such other duties as may be prescribed by law. He shall receive for his services the same salary as provided by law for the Auditor of State.

§ 24. The officers of the executive department mentioned in this article shall at stated times receive for their services compensation to be established by law, which shall not be diminished during the period for which they shall have been elected or appointed.

§ 25. The officers of the executive department and judges of the Supreme Court shall not be eligible, during the period for which they may be elected or appointed to their respective offices, to any position in the gift of the qualified electors or of the General Assembly of this State.

§ 26. The returns of every election for State, county and judicial officers not herein provided for shall be sealed up and transmitted to the seat of government by the returning officers and directed to the Secretary of State, who shall open and publish the same, and the persons so elected shall be duly commissioned by the Governor.

ARTICLE VII

JUDICIARY

§ 1. The judicial power of the State shall be vested in the Senate sitting as a court of impeachment, a Supreme Court, Circuit Courts and such other courts inferior to the Supreme Court as the General Assembly may from time to time establish.

§ 2. The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members thereof. The Chief Justice shall preside, and the Secretary of State shall act as clerk of the court. Provided, that in case of the trial of either of them the person appointed temporarily to perform the duties of the office shall act.

The Governor and all other civil officers under this State shall be liable to impeachment for any misconduct or maladministration of the respective office, but judgment in such cases shall not extend farther than to removal from office and disqualification to hold any office of honor, trust or profit under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial and judgment according to law.

§ 3. Two terms of the Supreme Court shall be held at the seat of government annually. Provided, that the General Assembly may provide by law for holding said court at three other places. The Supreme Court shall consist of one Chief Justice, who shall be appointed by the Governor, by and with the advice and consent of the Senate, for the term of eight years, and four associate justices, who shall be chosen by the qualified electors of the State at large for the term of eight years. Provided, that two of the associate justices first chosen under this Constitution shall serve for four years after the next general election and two of them for eight years after said election, said times to be determined by lot; but thereafter the associate justices shall be chosen for the full term.

§ 4. The Supreme Court shall have general supervision and control over all inferior courts of law and equity. It shall have power to issue writs of error, supersedeas, certiorari, habeas corpus, mandamus, quo warranto and other remedial writs, and to hear and determine the same. Final judgments in the inferior courts may be brought by writ of error or by appeal to the Supreme Court in such manner as may be prescribed by law.

§ 5. The inferior courts of the State as now constituted by law, except as hereinafter provided, shall remain with the same jurisdiction as they now possess. Provided, that the General Assembly may provide for the establishment of such inferior courts, changes of jurisdiction, or abolition of existing inferior courts as may be deemed requisite. The judges of the inferior courts herein provided for, or of such as may hereafter be established by law, shall be appointed by the Governor, by and with the advice and consent of the Senate, for the term of six years and until such time as the General Assembly may otherwise direct. Provided, that the General Assembly shall not interfere with the term of office of any judge.

§ 6. All writs and other processes shall run in the name of the State of Arkansas, and bear the teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

§ 7. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been counsel or have presided in any inferior court.

§ 8. In case all or any of the judges of the Supreme Court shall be disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the Governor of the State, and he shall immediately commission specially, the required number of men learned in the law for trial and determination thereof.

§ 9. Whenever at ten o'clock A. M. of the second day of any term of the inferior courts of this State the judge thereof is not present, or if present, and he cannot for any cause properly preside at the trial of any case then pending therein, the attorneys of said court then present may elect a special judge, who shall preside during the trial of such case or cases, or shall hold said court until the appearance of the regular judge thereof. The proceedings in such cases shall be entered at large upon the record.

§ 10. The judge of the inferior courts may temporarily exchange circuits or hold courts for each other under such regulation as may be prescribed by law.

§ 11. Judges shall not charge juries with regard to matters of fact, but shall declare the law. In all trials by jury the judges shall give their instructions and charges in writing; and, if the trial is by the court, he shall reduce to writing his findings upon the facts in the case, and shall declare the law in the same manner he is required to do when instructing juries.

§ 12. Any judge whose appointment or election is herein provided for shall be at least twenty-five years of age, a qualified elector of this State, and shall have been for one year an actual resident of the State, and shall reside in the circuit or district to which he may be appointed or elected.

§ 13. The judges of the Supreme and inferior courts shall, at stated times, receive a compensation for their services as is now or may hereafter be provided by law, and which shall not be diminished during the respective terms for which they may be elected or appointed.

§ 14. The inferior courts shall hold annually such terms as the General Assembly may direct.

§ 15. All appeals from inferior courts shall be taken in such manner and to such courts as may be provided by law. Appeals may be taken from courts of Justices of the Peace to such courts and in such manner as may be prescribed by law.

§ 16. When a vacancy occurs in the office of judge of the Supreme or any of the inferior courts it shall be filled by appointment of the Governor, which appointee shall hold his office the residue of the unexpired term and until his successor is elected and qualified.

§ 17. The Supreme Court and such other courts as may be established by law shall be courts of record and shall each have a common seal.

§ 18. The Supreme Court shall appoint a clerk of such court and also a reporter of its decisions. The decisions of the Supreme Court shall be in writing and signed by the judges concurring therein. Any judge dissenting therefrom shall give the reasons of such dissent in writing over his signature; all such decisions shall be filed in the office of the clerk of the Supreme Court and be published in such manner as the General Assembly may direct. The clerk and reporter shall hold their respective offices for the term of six years, subject to removal by the court for cause.

§ 19. A County Clerk shall be elected by the qualified electors in each organized county in this State, for the term of four years, and shall

perform such duties and receive such fees as are now or may hereafter be prescribed by law.

§ 20. In each township in this State there shall be elected by the qualified electors thereof two Justices of the Peace, who shall hold their offices for the term of four years. Provided, that in such townships as may contain more than two hundred qualified electors an additional Justice of the Peace may be chosen. Justices of the Peace shall have exclusive original jurisdiction in all actions of contract and replevin where the amount in controversy does not exceed two hundred dollars, and concurrent jurisdiction with the Circuit Court where the amount in controversy does not exceed five hundred dollars. In criminal causes the jurisdiction of Justices of the Peace shall extend to all matters less than felony for final determination and judgment.

§ 21. Any suitor in any court in this State shall have the right to prosecute or defend his suit either in his own proper person or by attorney.

§ 22. In the courts of this State there shall be no exclusion of any witness in civil actions because he is party to, or is interested in, the issue to be tried, and no person convicted of infamous crime shall be a competent witness in any cause without the consent of both parties to the controversy. Provided, that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with or statements to the testator, intestate or ward, unless called to testify thereto by the opposite party or required to testify thereto by the court. The judges of the Supreme and all inferior courts shall be conservators of the peace throughout their respective jurisdictions.

ARTICLE VIII

FRANCHISE

§ 1. The following classes of persons shall not be permitted to register, vote or hold office in this State: First — Persons who may have been convicted before any court of this State, or of the United States or any other State, of any crime punishable by law with death or confinement in the penitentiary. Provided, that any person disfranchised under this section who may be pardoned or his sentence commuted, such pardon or commutation of sentence shall remove all disabilities imposed by this section. Second — Paupers, idiots and insane persons.

§ 2. Every male person who has attained the age of twenty-one years and who is a citizen of the United States, or who has legally declared his

intention to become a citizen thereof, who shall have resided in this State six months, and in the county in which he offered his vote ten days next preceding the election, shall be deemed a qualified elector and entitled to vote, if registered, unless disqualified by some one of the clauses of section one of this article.

§ 3. In all elections by the people the electors shall vote by ballot. The secrecy of the ballot shall be preserved inviolate, and the General Assembly shall provide suitable laws for that purpose. On the day of an election held by the people no elector shall be subject to arrest on any civil process. The General Assembly shall pass adequate laws to prevent the sale of intoxicating liquors on the day on which any election by the people may be held.

[NOTE. — The act of January 23, 1873, providing for the submission of the forgoing article as an amendment to the Constitution for ratification by the people, provides that if such amendment should be ratified, it should be substituted for and known as ARTICLE VIII. Hence the amendment takes its place in the body of the Constitution.

Submitted to the people for ratification on the third day of March, 1873, and declared ratified on the nineteenth day of April, 1873, by proclamation of the Governor of that date. — COMPILER.]

ARTICLE IX

EDUCATION

§ 1. A general diffusion of knowledge and intelligence among all classes being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain a system of free schools for the gratuitous instruction of all persons in this State between the ages of five and twenty-one years, and the funds appropriated for the support of common schools shall be distributed to the several counties in proportion to the number of children and youths therein between the ages of five and twenty-one years, in such manner as shall be prescribed by law, but no religious or other sect or sects shall ever have an exclusive right to, or control of any part of, the school funds of this State.

§ 2. The supervision of public schools shall be vested in a Superintendent of Public Instruction and such other officers as the General Assembly shall provide. The Superintendent of Public Instruction shall receive such salary and perform such duties as shall be prescribed by law.

§ 3. The General Assembly shall establish and maintain a State University, with departments for instruction in teaching in agriculture and the natural sciences, as soon as the public school fund will permit.

§ 4. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by the United States or this State; also all mines, stocks, bonds, lands and other property now belonging to any fund for purposes of education; also the net proceeds of all sales of lands and other property and effects that may accrue to this State by escheat, or from sales of estrays, or from unclaimed dividends or distributive shares of the estates of deceased persons, or from fines, penalties or forfeitures; also any proceeds of the sales of public lands which may have been or may be hereafter paid over to this State (Congress consenting); also the grants, gifts or devises that have been or hereafter may be made to this State, and not otherwise appropriated by the terms of the grant, gift, or devise, shall be securely invested and sacredly preserved as a public school fund, which shall be the common property of the State; the annual income of which fund, together with one dollar per capita to be annually assessed on every male inhabitant of this State over the age of twenty-one years, and so much of the ordinary annual revenue of the State as may be necessary, shall be faithfully appropriated for establishing and maintaining the free schools and the university in this article provided for, and for no other uses or purposes whatever.

§ 5. No part of the public school fund shall be invested in the stocks or bonds or other obligations of any State or county, city, town or corporation. The stocks belonging to any school fund or university fund shall be sold in such manner and at such times as the General Assembly shall prescribe, and the proceeds thereof and the proceeds of the sales of any lands or other property which now belongs or may hereafter belong to said school fund may be invested in the bonds of the United States.

§ 6. No township or school district shall receive any portion of the public school fund, unless a free school shall have been kept therein for not less than three months during the year, for which distribution thereof is made. The General Assembly shall require by law that every child of sufficient mental and physical ability shall attend the public schools, during the period between the ages of five and eighteen years, for a term equivalent to three years, unless educated by other means.

§ 7. In case the public school fund shall be insufficient to sustain a free school at least three months in every year in each school district in this State, the General Assembly shall provide by law for raising such deficiency by levying such tax upon all taxable property in each county, township or school district as may be deemed proper.

§ 8. The General Assembly shall, as far as it can be done without infringing upon vested rights, reduce all lands, moneys or other property used or held for school purposes in the various counties of this State into the public school fund herein provided for.

§ 9. Provision shall also be made by general laws for raising such sum or sums of money by taxation or otherwise in each school district as may be necessary for the building and furnishing of a sufficient number of suitable schoolhouses for the accommodation of all the pupils within the limits of the several school districts.

ARTICLE X

FINANCES, TAXATION, PUBLIC DEBT AND EXPENDITURES

§ 1. The levying of taxes by the poll is grievous and oppressive; therefore, the General Assembly shall never levy a poll-tax except for school purposes.

§ 2. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, joint stock companies or otherwise; and also all real and personal property, according to its true value in money; but burying-grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, shall never be taxed. Real estate shall be appraised at least once every five years, by an appraiser to be provided for by law, at its true value in money. Personal property shall be appraised in such manner as may be provided by law at its true value in money, but the General Assembly may exempt from taxation personal property to the value of five hundred dollars to each taxpayer.

§ 3. The General Assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned and all other property, effects or dues of every description, without deduction, of all banks now existing or hereafter created, and of all bankers, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on other property of individuals.

§ 4. The General Assembly shall provide for raising revenue sufficient to defray the expenses of the State for each year; and also a sufficient sum to pay the interest on the State debt.

§ 5. No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same.

§ 6. The credit of the State or counties shall never be loaned for any purpose without the consent of the people thereof expressed through the ballot-box.

§ 7. The General Assembly may require the exhibit of receipts and expenditures of State and county officers at such time and manner as may be prescribed by law.

§ 8. No money shall be paid out of the treasury until the same shall have been appropriated by law.

§ 9. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; and the money arising from the creation of such debts shall be appropriated to the purpose for which it was obtained or to pay the debts so contracted, and to no other.

§ 10. In addition to the above power, the State may contract debts to repel invasion, suppress insurrection, preserve the public peace, defend the State in time of war, or to redeem the present outstanding indebtedness of the State; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and no other, and all debts incurred to redeem the present outstanding indebtedness of the State shall be so contracted as to be payable by the sinking fund hereinafter provided for, as the same shall accumulate.

§ 11. The faith of the State being pledged for the payment of its debt, in order to provide therefor there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and annually to reduce the same. The said sinking fund shall consist of such net earnings and profits of public institutions, bonds, stocks or other property of the State, or of any other funds or resources that are or may be provided by law.

§ 12. The Governor, Secretary of State and Attorney-General are hereby created a board of commissioners, to be styled "the Commissioners of the Sinking Fund."

§ 13. The Commissioners of the Sinking Fund shall immediately preceding each regular session of the General Assembly make an estimate of the probable amount of the fund provided by the eleventh section of this article from all sources, except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, and transmit the same to the General Assembly; and the General Assembly shall make all necessary provision for raising and disbursing said sinking fund in pursuance of the provisions of this article.

§ 14. It shall be the duty of said commissioners faithfully to apply in such manner as the General Assembly may by law direct said fund, together with all moneys that may be by the General Assembly appropriated to that object, to the payment of the interest as it becomes due and the redemption of the principal of the public debt of the State, excepting only school and trust funds held by the State.

§ 15. The principal arising from the sale of all lands donated to the State for school purposes shall be paid into the treasury, and the State

shall pay interest thereon for the support of schools at the rate of six per cent per annum.

§ 16. The State shall never assume the debts of county, town, city or other corporation unless such debts have been created to repel invasion, suppress insurrection or to provide for the public welfare and defense.

§ 17. The General Assembly shall tax all privileges, pursuits and occupations that are of no real use to society; all others shall be exempt, and the amount thus raised shall be paid into the treasury.

ARTICLE XI

MILITIA

§ 1. All able-bodied electors in this State shall be liable to military duty in the militia of this State, but all citizens of any denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be exempt therefrom upon such conditions as may be prescribed by law.

§ 2. The General Assembly shall provide for organizing, equipping and disciplining the militia in such manner as it shall deem expedient, not incompatible with the laws of the United States.

§ 3. The Governor shall be commander-in-chief, and shall have power to call out the militia to execute the laws, to suppress insurrection, to repel invasion and to preserve the public peace.

ARTICLE XII

EXEMPTED PROPERTY

§ 1. The personal property of any resident of this State to the value of two thousand dollars, to be selected by such resident, shall be exempted from sale on execution or other final process of any court issued for the collection of any debt contracted after the adoption of this Constitution.

§ 2. Hereafter the homestead of any resident of this State who is a married man or head of a family shall not be encumbered in any manner while owned by him except for taxes, laborers' and mechanics' liens and securities for the purchase money thereof.

§ 3. Every homestead not exceeding one hundred and sixty acres of land, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any town, city or village, or in lieu thereof, at the option of the owner; any lot in any city, town or village, with the

dwelling and appurtenances thereon, owned and occupied by any resident of this State, and not exceeding the value of five thousand dollars, shall be exempted from sale on execution or any other final process from any court; but no property shall be exempt from sale for taxes, for the payment of obligations contracted for the purchase of said promises, for the erection of improvements thereon or for labor performed for the owner thereof. Provided, that the benefit of the homestead herein provided for shall not be extended to persons who may be indebted for dues to the State, county, township, school or other trust funds.

§ 4. If the owner of a homestead die, leaving a widow, but no children, the same shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.

§ 5. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts, in all cases, during the minority of his children, and also so long as his widow shall remain unmarried, unless she be the owner of a homestead in her own right.

§ 6. The real and personal property of any female in this State, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain the separate estate and property of such female, and may be devised or bequeathed by her the same as if she were a femme sole. Laws shall be passed providing for the registration of the wife's separate property, and when so registered, and so long as it is not entrusted to the management or control of her husband otherwise than as an agent, it shall not be liable for any of his debts, engagements or obligations.

ARTICLE XIII

AMENDMENTS TO THE CONSTITUTION

§ 1. Any amendment to this Constitution may be proposed in either House of the General Assembly, and if the same shall be agreed to by majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published as provided by law, for three months previous to the time of making such choice; and if the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as the General Assembly shall

provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this State.

§ 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for, or against, each of said amendments separately.

ARTICLE XIV

APPORTIONMENT

§ 1. The congressional districts shall remain as they now are. Provided, that the General Assembly may, at the first session held after the adoption of this Constitution, redistrict the State for congressional purposes.

§ 2. Until after the apportionment as herein provided for, the senatorial and representative districts shall be composed of the following counties, to-wit: The first, of Jackson, Craighead, Poinsett, Cross and Mississippi; Second, of Lawrence, Randolph and Greene; Third, of Madison, Marion, Carroll, Fulton and Izard; Fourth, of Independence and Van Buren; Fifth, of Searcy, Pope and Conway; Sixth, of Newton, Johnson and Yell; Seventh, of Washington and Benton; Eighth, of Crawford, Franklin and Sebastian; Ninth, of Crittenden, St. Francis and Woodruff; Tenth, of Pulaski and White; Eleventh, of Phillips and Monroe; Twelfth, of Prairie and Arkansas; Thirteenth, of Scott, Polk, Montgomery and Hot Spring; Fourteenth, of Hempstead; Fifteenth, of Lafayette and Little River; Sixteenth, of Union and Calhoun; Seventeenth, of Clark, Pike and Sevier; Eighteenth, of Columbia; Nineteenth, of Ouachita; Twentieth, of Jefferson and Bradley; Twenty-first, of Dallas, Saline and Perry; Twenty-second, of Ashley, Chicot, Drew and Desha. The Senators and Representatives shall be apportioned among the several senatorial and representative districts as follows, to-wit:

First District — One Senator and four Representatives.

Second District — One Senator and three Representatives.

Third District — One Senator and four Representatives.

Fourth District — One Senator and three Representatives.

Fifth District — One Senator and three Representatives.

Sixth District — One Senator and three Representatives.

Seventh District — One Senator and four Representatives.

Eighth District — One Senator and four Representatives.

Ninth District — One Senator and four Representatives.

Tenth District — Two Senators and six Representatives.

Eleventh District — Two Senators and six Representatives.

Twelfth District — One Senator and four Representatives.

Thirteenth District — One Senator and three Representatives.

Fourteenth District — One Senator and three Representatives.
Fifteenth District — One Senator and three Representatives.
Sixteenth District — One Senator and two Representatives.
Seventeenth District — One Senator and four Representatives.
Eighteenth District — One Senator and three Representatives.
Nineteenth District — One Senator and two Representatives.
Twentieth District — Two Senators and six Representatives.
Twenty-first District — One Senator and two Representatives.
Twenty-second District — Two Senators and six Representatives.

ARTICLE XV

MISCELLANEOUS PROVISIONS

§ 1. The president of the convention shall, immediately after the adjournment thereof, cause this Constitution to be deposited in the office of the Secretary of State, and shall transmit a copy of the same to the President of the United States, to be by him laid before the Congress of the United States.

§ 2. In all cases not otherwise provided for in this Constitution, the General Assembly may determine the mode of filling all vacancies in all offices, and of choosing all necessary officers, and shall define their respective powers and duties and provide suitable compensation for all officers.

§ 3. All general elections shall be held on the Tuesday succeeding the first Monday in November, and shall be biennial, commencing at the general election of A.D. 1868; but all officers elected under the provisions of this Constitution and schedule, except members of Congress, at the election commencing on the thirteenth day of March, 1868, shall hold and continue in office in accordance with the provisions of this Constitution the same as though elected at the general election to be held on the Tuesday succeeding the first Monday in November, 1868; and no election shall be held for said offices at the general election of 1868.

§ 4. All chartered cities and villages under the laws of this State shall hold their municipal elections for the year 1868 at such times and places as may be provided in this Constitution and the schedule to the same.

§ 5. The term of office of all township and precinct officers shall expire thirty days after this Constitution goes into effect, and the Governor shall thereafter appoint such officers, whose term of office shall continue until the General Assembly shall provide by law for an election of said officers.

§ 6. Until the General Assembly shall otherwise provide, a Prosecuting Attorney for each judicial circuit shall be appointed by the Governor, by and with the advice and consent of the Senate, who shall hold his office for the term of four years and until his successor is chosen and qualified. Provided, that the General Assembly shall not interfere with the term of any appointed Prosecuting Attorney.

§ 7. The compensation of Senators and Representatives shall be six dollars per diem during the first session after the adoption of this Constitution, but may afterward be prescribed by law. Provided, no increase of compensation shall be prescribed which shall take effect until the period for which the members of the House of Representatives then existing shall have expired.

§ 8. Senators and Representatives shall receive twenty cents per mile for each mile necessarily traveled in going to and returning from the seat of government in attending each session of the General Assembly, until otherwise provided by law.

§ 9. All salaries, fees and per diem or other compensation of all State, county, town or other officers within the State shall be payable in such funds as may by law be receivable for State taxes.

§ 10. Any public fund set apart by the General Assembly for one purpose shall not be used for another, unless in each case otherwise specially authorized by law.

§ 11. This convention shall appoint not more than three persons, learned in the law, whose duty it shall be to revise and rearrange the statute laws of this State, both civil and criminal, so as to have but one law on any one subject; and also three other persons, learned in the law, whose duty it shall be to prepare a code of practice for the courts, both civil and criminal, in this State, by abridging and simplifying the rules of practice and laws in relation thereto: all of whom shall, at as early a day as practicable, report the result of their labors to the General Assembly for their adoption or modification. The General Assembly shall provide suitable compensation for said persons appointed as aforesaid.

§ 12. No county now established by law shall ever be reduced by the establishment of any new county or counties to less than six hundred square miles; nor shall any county be hereafter established which shall contain less than six hundred square miles.

§ 13. No indenture of any person hereafter made and executed out of this State, or, if made in this State, where the term of service exceeds one year, shall be of the least validity, except those given in cases of apprenticeships, which shall not be for a longer term than until the

apprentice shall arrive at the age of twenty-one years if a male, or eighteen years if a female.

§ 14. All contracts for the sale or purchase of slaves are null and void, and no court of this State shall take cognizance of any suit founded on such contracts; nor shall any amount ever be collected or recovered on any judgment or decree which shall have been, or which hereafter may be, rendered on account of any such contract or obligation on any pretext, legal or otherwise.

§ 15. There shall be a great seal of the State, which shall be kept and used officially by the Secretary of State, and the seal heretofore in use in this State shall continue to be the great seal of the State until another shall have been adopted by the General Assembly.

§ 16. Private seals are hereby abolished, and hereafter no distinction shall exist between sealed and unsealed instruments concerning contracts between individuals. All laws in this State not in conflict with this Constitution shall remain in full force until otherwise provided by the General Assembly, or until they expire by their own limitation. Nothing herein shall be construed to impair vested rights under provisions of existing laws.

§ 17. All officers of this State — executive, legislative and judicial — before they enter upon the duties of their respective offices, shall take the following oath: “I, _____, do solemnly swear (or affirm) that I am not disfranchised by the Constitution or laws of the United States, or the Constitution of the State of Arkansas; that I will honestly and faithfully support and defend the Constitution and laws of the United States, the Union of States, and the Constitution, and laws of the State of Arkansas, and that I will honestly and faithfully discharge the duties of the office on which I am about to enter to the best of my ability. So help me, God.”

§ 18. The term of all officers elected or appointed under the provisions of this Constitution shall expire on the first day of January, 1873, unless herein otherwise provided.

§ 19. No one shall be precluded from being elected or appointed to any office by reason of having been a delegate to this convention or an officer of the same.

§ 20. No person shall be allowed or qualified to sit on any jury who is not a qualified elector.

§ 21. The General Assembly may, by general law, declare the legal rate of interest upon contracts in which no rate of interest is specified,

but no law limiting the rate of interest for which individuals may contract in this State shall ever be passed.

§ 22. All judges and clerks of election appointed under provisions of this Constitution shall take and subscribe to the oath of an elector as provided in section five, of article VIII, before they enter upon the duties of said office; and said judges are hereby authorized to administer the oath to each other and to the clerks; also to administer the same to all electors offering to vote. Said judges and clerks shall also swear to discharge their respective duties to the best of their ability according to the law. Judges of Election may appoint a suitable number of persons who shall, with themselves, be conservators of the peace, and they are hereby empowered to arrest all offenders. Any one refusing to act as such when called on by the judges shall be subject to a fine of at least one hundred dollars or imprisonment not less than six months, or both.

SCHEDULE

§ 1. On the thirteenth day of March, A.D. 1868, and such successive days as hereinafter provided, an election shall be held for members of the House of Representatives of the United States, Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Attorney-General, Superintendent of Public Instruction, Judges of the Supreme Court, members of the General Assembly and all county officers, and also for the submission of this Constitution to the people for their adoption or rejection.

§ 2. Upon the days designated as aforesaid every qualified elector under the provisions of this Constitution may vote for all officers to be elected under this Constitution at such election, and also for or against the adoption of this Constitution.

§ 3. In voting for or against the adoption of this Constitution, the words "For Constitution" or "Against Constitution" shall be written or printed on the ballot of each voter, but no voter shall vote for or against this Constitution on a separate ballot from that cast by him for officers to be elected at said election under this Constitution.

§ 4. A board of commissioners is hereby appointed, to consist of James L. Hodges, Joseph Brooks and the president of this convention, any two of whom shall constitute a quorum to transact business, who shall keep an office for the transaction of business in Little Rock, and who may employ such clerical force as may be necessary, said clerks not to receive more per day for each day actually employed than the per diem paid to the assistant secretaries of this convention, and who are empowered and authorized to appoint, or cause to be appointed, suitable persons for judges and clerks of election in each county in this State, to hold the election therein for all State and county officers, and

for members of the General Assembly and of the House of Representatives of the United States, and also for the ratification of this Constitution. Said election shall be held at such times and places in each county, commencing on the thirteenth day of March and continuing on such successive days as the commissioners may direct, to secure a full and fair vote at such election.

§ 5. The judges of election, appointed as aforesaid, shall make returns of the same to said commissioners in such manner and under such regulations as said commissioners may prescribe; which returns shall show the number of votes cast at said election for and against this Constitution, and the number cast for each candidate for the offices provided for in this Constitution and schedule.

§ 6. Any person contesting the election under this Constitution for any State office or member of the General Assembly, shall do so before said board of commissioners, who shall have power to decide and declare the right to any office contested, and give the candidate legally elected a certificate of the same; Provided, said commissioners may, in the cases of members of the General Assembly whose right to the seats may be contested, refer the same to the General Assembly for their determination. Said board of commissioners shall appoint the judges and clerks of the municipal elections to be held under the provisions of this Constitution. Said judges shall conduct and make returns of said elections in the manner prescribed by the charter of the city or village in which said municipal election shall be held.

§ 7. Said commissioners shall appoint suitable persons as boards in every county to hear and decide all cases of contested county elections.

§ 8. The said commissioners shall have power to inquire into the fairness or validity of the voting upon the ratification of this Constitution, and to count the votes given at said election, and shall reject all fraudulent or illegal votes cast at said election; and said commissioners shall also have power, whenever it is made to appear that fraud, fear, violence, improper influence or restraint were used, or persons were prevented or intimidated from voting at such elections, to take such steps, either by setting aside the election and ordering a new one, or rejecting votes, or correcting the result in any county or precinct as may in such cases be just and equitable.

§ 9. The said commissioners shall declare the result of the election upon the ratification of this Constitution, and, if adopted, the president of this convention shall transmit a certified copy of the same, together with an abstract of the votes cast, to the President of the United States, to be by him laid before the Congress of the United States for their approval or rejection, and shall also declare the officers elected thereunder; and, if declared ratified, the Constitution shall, from and after that date, be in full force and effect.

§ 10. No person disqualified from voting or registering under this Constitution shall vote for candidates for any office, nor shall be permitted to vote for the ratification or rejection of this Constitution at the polls herein authorized. The Governor and all other officers elected under this Constitution shall enter upon the duties of their offices when they shall have been declared duly elected by said board of commissioners, and shall have duly qualified. All officers shall qualify and enter upon the discharge of their duties of their offices within fifteen days after they have been duly notified of their election or appointment.

§ 11. Upon notice of the election or appointment and qualification of the officers elected or appointed under this Constitution, the present incumbent of all State, county and city offices shall vacate the same and turn over to the officers so elected or appointed and qualified hereunder all books, papers, records, moneys and documents belonging or pertaining to said offices, on application made by the officers elected or appointed and qualified under this Constitution.

§ 12. Any person may vote at the polls herein authorized for the election of officers and ratification of this Constitution whom the judges of said election shall be satisfied by oath of the person offering to vote, and such other satisfactory evidence as they may require, is a legally qualified elector under this Constitution: Provided, the judges of election shall administer to every person offering to vote at said election the oath prescribed in this Constitution.

§ 13. In the event that either of the three commissioners appointed by section four hereof should be a candidate for any office, the other two commissioners shall canvass the vote so far as it relates to that office, and issue the certificate of the person elected.

§ 14. In case of death or any disability of any member or members of said board of commissioners, the remaining commissioner or commissioners shall have power to fill such vacancy; and said commissioner or commissioners so appointed shall have full power to act as though originally appointed.

§ 15. Any person selling or giving away intoxicating liquor during the time of the election herein provided for shall be punished by a fine of not less than two hundred dollars for each and every offense, or imprisoned not less than six months, or both.

§ 16. Said commissioners shall provide suitable poll-books for each county and such instructions as may be necessary to carry into effect the provisions of this schedule. Judges and clerks of election thus appointed shall receive the same per diem as the boards of registrars provided for in the act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867, and acts supplementary thereto.

§ 17. The commissioners herein appointed shall receive for their services for each day actually employed such compensation per day, and allowances, and in such manner, as are now provided for members of this convention. All expenses incurred under this schedule, not otherwise provided for, shall be paid out of the appropriation for defraying the expenses of this convention.

Done in convention, at Little Rock, the eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second. In witness whereof we have hereunto subscribed our names.

THOS. M. BOWEN,
President of the Convention and
Delegate from the County of Crawford.
JOHN G. PRICE, Secretary.

GEORGE S. SCOTT,
Little River County.
FRED R. POOLE,
Mississippi and Craighead Counties.
GEORGE W. DALE,
Independence County.
PETER C. MISNER,
Independence County.
CLIFFORD STANLEY SIMS,
Delegate from Desha County.
DANIEL COATES,
Delegate from St. Francis County.
J. A. HOUGHTON,
Delegate from Cross and Poinsett
Counties.
FRANKLIN MONROE ROUNSAVILLE,
Yell County.
SOLOMON EXON,
Delegate from Clark County.
MILES LEDFORD LANGLEY,
Clark County.
GAYLE H. KYLE,
Delegate from Dallas County.
MOSES BELL,
Delegate from Sebastian County.
JOHN H. HUCHINSON, M. D.,
Delegate from Arkansas County.
JOHN McCLURE,
Delegate, Arkansas County.
PARLEY A. WILLIAMS,
Delegate from Marion and Newton.
ROBERT HATFIELD,
Delegate from Franklin County.
JOHN W. HARRISON,
Delegate from Hot Spring County.
JAMES W. MASON,
Delegate from Chicot County.

GEORGE W. McCOWN,
Delegate from Columbia County.
WILLIAM G. HOLLIS,
Delegate from Calhoun County.
JAMES L. HODGES,
Delegate from Pulaski County.
JAMES HINDS,
Delegate from Pulaski County.
HENRY RECTOR,
Delegate from Pulaski County.
THOMAS P. JOHNSON,
Delegate from Pulaski County.
JOHN C. PRIDDY,
Delegate from Montgomery County.
ASA HODGES,
Delegate from Crittenden County.
F. M. SAMS,
Delegate from Madison County.
CHARLES H. OLIVER,
Delegate from Scott County.
AMOS H. EVANS,
Delegate from Monroe County.
JOHN N. SARBER,
Delegate from Johnson County.
JESSE MILLSAPS,
Delegate from Van Buren County.
WILLIAM A. WYATT,
Delegate from Searcy and Fulton
Counties.
ANTHONY HINKLE,
Delegate from Conway County.
O. P. SYNDER,
Delegate from Jefferson County.
SAMUEL W. MALLORY,
Delegate from Jefferson County.
JAMES M. GRAY,
Delegate from Jefferson County.

JOSEPH BROOKS,
Phillips County.
THOMAS SMITH,
Phillips County.
WILLIAM H. GREY,
Phillips County.
JAMES T. WHITE,
Phillips County.
NATHAN N. RAWLINS,
From Ouachita County.
JOHN R. MONTGOMERY,
Delegate from Hempstead County.
SOLOMON D. BELDIN,
Delegate from Hempstead County.
RICHARD SAMUELS,
Delegate from Hempstead County.

R. C. VAN HOOK,
Delegate from Union County.
IRA L. WILSON,
Delegate from Union County.
WALTER W. BRASHEAR,
Delegate from Pope County.
ALFRED M. MERRICK,
Delegate from Lafayette County.
WILLIAM A. BEASLEY,
Delegate from Columbia County.
JAMES P. PORTIS,
Delegate from Ouachita County.
MONROE HAWKINS,
Delegate from Lafayette County.
WM. MURPHY,
Delegate from Jefferson County.

TREATIES, COMPACTS, AND FEDERAL ACTS

TREATIES.

ADMISSION TO UNION AND RELATED ACTS.

BOUNDARY LINES.

FEDERAL LAND GRANT ACTS.

RAILROAD LAND GRANTS.

ADMISSION OF STATE TO REPRESENTATION IN CONGRESS.

FEDERAL LAWS CONCERNING AUTHENTICATION.

TREATIES

Louisiana Cession Treaty of 1803.

The President of the United States of America, and the first consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémiaire, an. 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th of October, 1795, between his Catholic majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit: the President of the United States [of America,] by and with the advice and consent of the Senate of the said States, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French Republic; and the first consul, in the name of the French people, citizen Barbé Marbois, Minister of the Public Treasury, who, after having respectively exchanged their full powers, have agreed to the following articles.

ART. I. Whereas, by the article the third of the treaty concluded at St. Ildelfonso, the 9th Vendémiaire, an. 9 (1st October, 1800) between the first consul of the French Republic and his Catholic majesty, it was agreed as follows: "His Catholic majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States." And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory: The first consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States in the name of the French Republic, forever and in full sovereignty, the said territory

with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty.

ART. II. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. — The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterward, given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

ART. III. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ART. IV. There shall be sent, by the government of France, a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his Catholic majesty the said country and its dependences, in the name of the French Republic, if it thus has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

ART. V. Immediately after the ratification of the present treaty by the President of the United States, and in case that of the first consul shall have been previously obtained, the commissary of the French Republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

ART. VI. The United States promises to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. VII. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements for the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies; and the ships of Spain, coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her

colonies, shall be admitted during the space of twelve years in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandize, or other greater tonnage than those paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory; the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is however well understood that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandize of the United States, or any right they may have to make such regulations.

ART. VIII. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. IX. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic prior to the 30th September, 1800, (8th Vendémiaire, an. 9,) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular convention signed at the same date as the present treaty relative to a definitive rule between the contracting parties is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

ART. X. The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner, if possible.

IN FAITH WHEREOF, the respective plenipotentiaries have signed these articles in the French and English languages; declaring nevertheless that the present treaty was originally agreed to in the French language; and have thereunto affixed their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French Republic, and the 30th of April, 1803.

ROBERT R. LIVINGSTON, [L.S.]

JAMES MONROE, [L.S.]

F. BARBÉ MARBOIS, [L.S.]

Publisher's Notes. For this treaty, see 8 Stat. 200.

ADMISSION TO UNION AND RELATED ACTS

Act of admission, 1836 (selected provisions).

Whereas, The people of the Territory of Arkansas, did, on the thirtieth day of January in the present year by a convention of delegates, called and assembled for that purpose, form for themselves a Constitution and State Government, which constitution and State Government, so formed, is republican: and whereas, the number of inhabitants within the said Territory exceeds forty-seven thousand seven hundred persons, computed according to the rule prescribed by the constitution of the United States; and the said convention have, in their behalf, asked the Congress of the United States to admit the said Territory into the Union as a State, on an equal footing with the original States:

The State of Arkansas shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever, and the said State shall consist of all the territory included within the following boundaries, to wit: beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the Saint Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red river, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians west of the Mississippi, made and concluded at the City of Washington, on the 26th day of May, in the year of our Lord one thousand eight hundred and twenty-eight; and to be bounded on the south side of Red River by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana State line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning.

§ 2. Until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

§ 3. All the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said State of Arkansas as elsewhere within the United States.

Publisher's Notes. Sections 4, 5, 6 and 7 of this act relate to the organization of the District Court of the United States in

this state, and, having been superseded by subsequent legislation, are omitted.

§ 8. The State of Arkansas is admitted into the Union upon the express condition, that the people of the said State shall never interfere with the primary disposal of the public lands within the said State, nor shall they levy a tax on any of the lands of the United States within the said State; and nothing in this act shall be construed as an assent by Congress to all or to any of the propositions contained in the ordinance of the said convention of the people of Arkansas, nor to deprive the said State of Arkansas of the same grants, subject to the same restrictions, which were made to the State of Missouri by virtue of an act entitled "An act to authorize the people of the Missouri Territory to form a Constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and to prohibit slavery in certain Territories," approved the sixth day of March, one thousand eight hundred and twenty.

Publisher's Notes. Act of June 15, sections related to the federal district 1836. See 5 Stat. 50, ch. 100. Omitted court and were subsequently superseded.

Compact supplementary to act of admission, 1836.

In lieu of the propositions submitted to the Congress of the United States, by an ordinance passed by the convention of delegates at Little Rock, assembled for the purpose of making a constitution for the State of Arkansas, which are hereby rejected; and that the following propositions be, and the same are hereby, offered to the General Assembly of the State of Arkansas, for their free acceptance or rejection, which if accepted, under the authority granted to the General Assembly, for this purpose, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of the inhabitants of such township for the use of schools.

Second. That all salt springs not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said State, for the use of said State, the same to be selected by the General Assembly thereof on or before the first day of January, one thousand eight hundred and forty; and the same, when so selected, to be used under such terms, conditions, and regulations as the General Assembly of the said State shall direct: *Provided*, That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided also*, That the General Assembly shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of Congress; and that nothing contained in the act of Congress entitled "An act authorizing the Governor of the Territory of Arkansas to lease the salt springs in said Territory, and for other purposes," or in any other act, shall be construed to give to the said State any further or other claim whatso-

ever, to any salt springs or lands adjoining thereto, than those hereby granted:

Third. That five per cent of the nett proceeds of the sale of lands lying within the said State, and which shall be sold by Congress, from and after the first day of July next, after deducting all expenses incident to the same, shall be reversed for making public roads and canals within the said State, under the direction of the General Assembly thereof.

Fourth. That a quantity of land not exceeding five sections, be and the same is hereby, granted to the said State in addition to the ten sections which have already been granted, for the purpose of completing the public buildings of the said State at Little Rock; which said five sections shall, under the direction of the General Assembly of said State, be located, at any time, in legal divisions of not less than one-quarter section, in such townships and ranges as the General Assembly aforesaid may select, on any of the unappropriated lands of the United States within the said State.

Fifth. That the two entire townships of land which have already been located by virtue of the act entitled "An act concerning a seminary of learning in the Territory of Arkansas," approved the second of March, one thousand eight hundred and twenty-seven, are hereby vested in and confirmed to the General Assembly of the said State, to be appropriated solely to the use of such seminary by the General Assembly: *Provided*, That the five foregoing propositions herein offered, are on the condition that the General Assembly or Legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide by an ordinance irrevocable without the consent of the United States, that the said General Assembly of said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively.

Publisher's Notes. Act of June 23, 1836. See 5 Stat. 58, ch. 120.

Amendment (1847) to second subdivision of 1836 supplementary compact.

The State of Arkansas shall be, and hereby is, authorized to sell, in such manner as the Legislature of said State shall by law direct, the whole or any part of the saline lands, granted to said State by virtue of

an act supplementary to the act entitled "An act for the Admission of the State of Arkansas into the Union, and to Provide for the due Execution of the Laws of the United States within the same, and for other Purposes," approved June twenty-third, eighteen hundred and thirty-six.

Publisher's Notes. Act of March 3, 1847. See 9 Stat. 182, ch. 56, § 3.

Amendment (1846) to fifth subdivision of 1836 supplementary compact.

Whereas the Congress of the United States, by an act supplementary to an act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes, approved June twenty-third, eighteen hundred and thirty-six, in the fifth proposition made to the State of Arkansas, and which was subsequently accepted by the General Assembly of the State of Arkansas, provided that the two entire townships of land located by virtue of an act of Congress entitled "An act concerning a Seminary of Learning in the Territory of Arkansas," approved the second day of March, eighteen hundred and twenty-seven, which, by the first-recited act of Congress, were vested in and confirmed to the General Assembly of the State of Arkansas, to be appropriated solely to the use and support of a university in said State: And whereas the General Assembly of the State of Arkansas have, by their resolution, approved December eighteen, eighteen hundred and forty-four, asked for a modification of said compact, to authorize said General Assembly to appropriate said seventy-two sections of land to common school purposes: Therefore —

The assent of Congress be, and is hereby, given to the change in said compact asked for by the said General Assembly, so as to authorize and empower the General Assembly of the State of Arkansas, and they are hereby authorized and empowered, to appropriate said seventy-two sections of land for the use and benefit of common schools in said State, or in any other mode the said General Assembly may deem proper, for the promotion of education in said State.

Publisher's Notes. Act of July 29, 1846. See 9 Stat. 42, ch. 58.

State acceptance of 1836 supplementary compact.

By virtue of the authority vested in said General Assembly by the provisions of the ordinance adopted by the convention of delegates assembled at Little Rock, for the purpose of forming a Constitution and system of government for said State, the proposition set forth in "An act supplementary to the act entitled 'an act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,'" are, hereby freely accepted, ratified and irrevocably confirmed as articles of

compact and union between the State of Arkansas and the United States.

The General Assembly of the State of Arkansas shall never interfere, without the consent of the United States, with the primary disposal of the soil within the said State owned by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than resident; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township or any other purpose, for the term of three years from and after the date of the patents respectively.

The governor of this state be required to transmit to the secretary of state of the United States, a duly authenticated copy of this ordinance.

Publisher's Notes. Act approved October 18, 1836. See Acts 1836, p. 212.

BOUNDARY LINES

Arkansas and Missouri (1848).

The dividing line between the States of Missouri and Arkansas, surveyed by commissioners appointed under authority of laws enacted by those States, and ratified as a common boundary by the act of the legislature of Arkansas, approved twenty-third December, eighteen hundred and forty-six, and of the legislature of Missouri, approved February sixteenth, eighteen hundred and forty-seven, shall be, and the same is hereby, approved and confirmed as the boundary between those States, and between the surveying and land districts bordering thereon; and the Secretary of the Treasury is hereby authorized to have the surveys of the public lands of the United States closed on the line so surveyed as above mentioned: *Provided*, the expense thereof shall not exceed six dollars per mile, for every mile and part of a mile actually surveyed, or necessarily resurveyed in closing those surveys.

Publisher's Notes. Act of Feb. 15, 1848. See 9 Stat. 211, ch. 10.

Arkansas and Indian country (1875).

The boundary-line between the State of Arkansas and the Indian country, as originally surveyed and marked, and upon which the lines of the surveys of the public lands in the State of Arkansas were closed, be, and the same is hereby, declared to be the permanent boundary-line between the said State of Arkansas and the Indian country.

§ 2. That the Secretary of the Interior shall, as soon as practicable, cause the boundary-line, as fixed in the foregoing section, to be retraced and marked in a distinct and permanent manner; and if the original line, when retraced, shall be found to differ in any respect from what the boundary-line would be if run in accordance with the provisions of the treaties establishing the eastern boundary-line of the Choctaw and Cherokee Nations, then the surveyors shall note such variations and compute the area of the land which in that case would be taken from the State of Arkansas or the Indian country, as the case may be; and the Secretary of the Interior shall also cause any monuments set up in any former survey indicating any line at variance with the survey provided for in this act to be obliterated.

Publisher's Notes. Act of March 3, 1875. See 18 Stat. 476, ch. 140.

Arkansas and Indian Territory (1905).

The consent of the United States is hereby given for the State of Arkansas to extend her western boundary line so as to include all that strip of land in the Indian Territory lying and being situate between the Arkansas State line adjacent to the city of Fort Smith, Arkansas, and the Arkansas and Poteau Rivers, described as follows, namely: Beginning at a point on the south bank of the Arkansas River one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running south westerly along the south bank of the Arkansas River to the mouth of the Poteau; thence at right angles with the Poteau River to the center of the current of said river; thence southerly up the middle of the current of the Poteau River (except where the Arkansas State line intersects the Poteau River) to a point in the middle of the current of the Poteau River opposite the mouth of Mill Creek, and where it is intersected by the middle of the current of Mill Creek; thence up the Middle of Mill Creek to the Arkansas State line; thence northerly along the Arkansas State line to the point of beginning: *Provided*, That nothing in this act shall be construed to impair any right now pertaining to any Indian tribe or tribes in said part of said Indian Territory under the laws, agreements, or treaties of the United States, or to affect the authority of the Government of the United States to make any regulations or to make any law respecting said Indians or their lands which it would have been competent to make or enact if this act had not been passed.

Publisher's Notes. Act of Feb. 10, 1905. See 33 Stat. 714, ch. 571.

Arkansas and Tennessee (1909).

The consent of the Congress of the United States is hereby given to the States of Tennessee and Arkansas to enter into such agreement or compact as they may deem desirable or necessary, not in conflict with the Constitution of the United States, or any law thereof, to fix the

boundary line between said States, where the Mississippi River now, or formerly, formed the said boundary line, and to cede respectively each to the other such tracts or parcels of the territory of each State as may have become separated from the main body thereof by changes in the course or channel of the Mississippi River, and also to adjudge and settle the jurisdiction to be exercised by said States, respectively, over offenses arising out of the violation of the laws of said States upon the waters of the Mississippi River.

Publisher's Notes. Act of Feb. 4, 1909.
See 35 Stat. 1163, Res. 7.

FEDERAL LAND GRANT ACTS

University and seminary land (1827).

The Secretary of the Treasury be, and he is hereby, authorized to set apart and reserve from sale, out of any of the public lands within the Territory of Arkansas, to which the Indian title has been, or may be, extinguished, and not otherwise appropriated, a quantity of land not exceeding two entire townships, for the use and support of an university within the said territory and for no other use or purpose whatsoever; to be located in tracts of land of not less than an entire section, corresponding with any of the legal divisions into which the public lands are authorized to be surveyed, one of which said townships, so set apart and reserved from sale, shall be in lieu of an entire township of land directed to be located on the waters of the Arkansas river in said territory, for the use of a seminary of learning therein, by an act of Congress, entitled "An act making provision for the establishment of additional land offices in the territory of Missouri," approved February the seventeenth, one thousand eight hundred and eighteen.

Publisher's Notes. Act of March 2, 1827. See 4 Stat. 235, ch. 53. See also the act of March 2, 1833 (4 Stat. 661, ch. 53) authorizing the governor to sell 20 sections of seminary land and to lease the remainder.

Public building in Little Rock (1831).

§ 1. The legislature of the territory of Arkansas be, and they are hereby authorized to select, or cause to be selected, a quantity of the unappropriated public lands in the territory of Arkansas, not exceeding ten sections, and in portions not less than one quarter section, which is hereby granted to said territory, for the purpose of raising a fund for the erection of a public building at Little Rock, the seat of government of said territory.

§ 2. The legislature of said territory be, and they are hereby authorized to adopt such measures for the sale of said tract of land, or any part thereof, at such times and manner, and convey the same by such deeds, as they shall deem expedient; and upon the presentation of such deeds of conveyance, as shall be adopted by said legislature and given

to the purchasers, to the commissioner of the general land office, it shall be the duty of the President to issue patents to the purchasers, as in other cases.

Publisher's Notes. Act of March 2, 1831. See 4 Stat. 473, ch. 67. See also the act of June 23, 1836 (5 Stat. 58, ch. 120), making an additional grant of 5 sections.

Courthouse and jail in Little Rock (1832).

There be granted to the territory of Arkansas, a quantity of land not exceeding one thousand acres, contiguous to, and adjoining the town of, Little Rock, for the erection of a courthouse and jail in said town; which lands shall be selected by the governor of the territory by legal sub-divisions, and disposed of in such manner as the legislature may by law direct; and the proceeds of the lands so disposed of, shall be applied towards building a courthouse and jail in said town of Little Rock; and the surplus, if any, may be applied to such other objects as the legislature of said territory may deem proper.

Publisher's Notes. Act of June 15, 1832. See 4 Stat. 531, ch. 129.

The selections having been made by an act of March 2, 1833 (4 Stat. 667, ch. 97), it was directed that a patent for the lands

be issued to the governor of the territory and his successors in office, and that the governor be authorized to lay off and sell the same in lots.

Public building in Little Rock (1832).

§ 1. All the authority and power is hereby vested in, and given to the governor of the territory of Arkansas, which was vested in, and given to the legislature of the territory of Arkansas, by an act of Congress of the second of March, one thousand eight hundred and thirty-one [4 Stat. 473, Ch. 67], by which a quantity of land not exceeding ten sections, was granted to said territory for the purpose of raising a fund for the erection of a public building at Little Rock, the seat of government of said territory.

§ 2. Nothing herein contained shall be so construed as authorizing any expense on the part of the United States for selecting said lands, or building said house, other than the aforesaid grant of ten sections of the unappropriated public lands.

Publisher's Notes. Act of July 4, 1832. See 4 Stat. 563, ch. 172. See also the act of Jan. 16, 1838 (5 Stat. 208, ch. 2) which

confirmed the locations and sales made by the governor, with certain exceptions.

Internal improvement lands, 1841 (selected provisions).

§ 8. There shall be granted to each State specified in the first section of this act (the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan) five hundred thousand acres of land for purposes of internal improvement: Provided, that to each of the said States which have already received grants for said

purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States, to be made within their limits respectively in such manner as the Legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States in said States respectively, shall have been surveyed according to existing laws. And there shall be and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

§ 9. The lands herein granted to the States above named shall not be disposed of at a price less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the nett proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement within the States aforesaid, respectively, namely: Roads, railways, bridges, canals and improvement of water-courses, and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

Publisher's Notes. Act of Sept. 4, 1841. See 5 Stat. 455, ch. 16, §§ 8, 9.

Governor's power under 1841 act (1842).

So much of the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emptions," approved September fourth, eighteen hundred and forty-one [5 Stat. 455, Ch. 16], as provides that the selections of the grants of land made to the several States, therein mentioned, for the purposes of internal improvement, shall be made, respectively, in such manner as the Legislatures thereof shall direct, in so far modified as to authorize the Governors of the States of Illinois, Arkansas and Missouri to cause the selections to be made for those States without the necessity of convening the Legislatures thereof for that purpose.

Publisher's Notes. Act of March 19, 1842. See 5 Stat. 471, ch. 8.

Sale of school lands (1843).

§ 1. The Legislatures of Illinois, Arkansas, Louisiana, and Tennessee, be, and they are hereby, authorized to provide by law for the sale and conveyance in fee simple, of all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said States, and to invest the money arising from the sales thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said Legislatures, to the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatever: Provided, Said land, or any part thereof, shall in no wise be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the Legislatures of said States shall by law direct; and in the apportionment of the proceeds of said fund, each township and district shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

Sec. 2. The legislatures of said States be, and they are hereby, authorized to make such laws and needful regulations as may be deemed expedient to secure and protect from injury or waste, the sections reserved by the laws of Congress, for the use of schools, to each township, and to provide by law, if not deemed expedient to sell, for leasing the same for any term not exceeding four years, in such manner as to render them productive, and most conducive to the object for which they were designed.

Sec. 3. If the proceeds accruing to any township or district from said fund, shall be insufficient for the support of schools therein, it shall be lawful for said Legislatures to invest the same in the most secure and productive manner, until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same: Provided, That the Legislatures aforesaid shall, in no case, invest the proceeds of the sale of the lands in any township in manner aforesaid, without the consent of the inhabitants of said township or district, to be obtained as aforesaid.

Sec. 4. Any sales of such lands, reserved as aforesaid, as have been made in pursuance of any of the laws enacted by the Legislatures of said States, and not inconsistent with the principles of this act, are hereby ratified and confirmed so far as the assent of the United States to the same may be necessary to the confirmation thereof.

Publisher's Notes. Act of Feb. 15, 1843. See 5 Stat. 600, ch. 33.

Swamp lands (1850).

§ 1. To enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein,

the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

§ 2. It shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in said State of Arkansas, subject to the disposal of the Legislature thereof: Provided, however, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

§ 3. In making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

§ 4. The provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

Approved September 28, 1850.

Publisher's Notes. Act of Sept. 28, 1850. See 9 Stat. 519, ch. 84.

RAILROAD LAND GRANTS

Act of 1853.

§ 1. That the right of way through the public lands be and the same is hereby granted to the States of Arkansas and Missouri, for the construction of a railroad from a point on the Mississippi River, opposite the mouth of the Ohio, in the State of Missouri, *via* Little Rock, to the Texas boundary line near Fulton, in Arkansas, with branches from Little Rock, in Arkansas, to the Mississippi River and to Fort Smith, in said State, with the right to take necessary materials of earth, stone, timber, etc., for the construction thereof: *Provided*, That the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road, made under the direction of the Legislatures of the said States, shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington city, within ninety days after the completion of the same.

§ 2. *And be it further enacted*, That there be and is hereby granted to the States of Arkansas and Missouri, respectively, for the purpose of aiding in making the railroad and branches as aforesaid, within their respective limits, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of preëmption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of preëmption has attached as aforesaid, which lands, being equal in quantity to one half of six sections in width on each side of said road, the States of Arkansas and Missouri shall have and hold to and for the use and purpose aforesaid: *Provided*, That the lands to be located shall in no case be further than fifteen miles from the line of the road: *And provided further*, That the lands hereby granted shall be applied in the construction of said road, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of the said railroad and branches through such reserved lands.

§ 3. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said road, shall not be sold for less than double the minimum price of the public lands when sold.

§ 4. *And be it further enacted*, That the said lands hereby granted to the said States shall be subject to the disposal of the Legislatures thereof, for the purposes aforesaid and no other; and the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

§ 5. *And be it further enacted*, That the lands hereby granted to said States shall be disposed of by said States only in the manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles or said road, may be sold; and when the Governors of said State or States shall certify to the Secretary of the Interior that twenty continuous miles of said road is completed, then another like quantity

of land hereby granted may be sold; and so from time to time until said road is completed; and if said road is not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

§ 6. *And be it further enacted*, That the United States Mail shall at all times be transported on the said road and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct.

Publisher's Notes. Act of Feb. 9, 1853.
See 10 Stat. 155, ch. 59.

Act of July 4, 1866.

§ 1. That there be, and is hereby, granted to the State of Missouri, for the purpose of aiding in the construction and extension of the Iron Mountain railroad, from its present terminus at Pilot Knob to a point on the southern boundary line of the State of Missouri, every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road; but in case it shall appear when the route of said road is definitely fixed that the United States have sold any sections or parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in sections or parts of sections, to be selected as aforesaid, as shall be equal to such lands as the United States have sold or otherwise appropriated or to which the rights of pre-emption have attached, which lands thus selected shall be held by the State of Missouri for the use and purposes aforesaid, and for none other: *Provided*, That the lands so located shall be within the Iron-ton land district as now established and not more than twenty miles from the line of said road: *And provided, further*, That all mineral lands except those containing coal and iron, and any lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroad through the same, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

§ 2. *And be it further enacted*, That there be, and is hereby, granted to the State of Arkansas, for the purpose of aiding in the construction and extension of a railroad from the point where the Iron Mountain railroad intersects the southern boundary line of Missouri, by the nearest and most practicable route, to a point at or near the town of Helena, on the Mississippi river, every alternate section of land,

designated by odd numbers, for ten sections in width on each side of said road; but in case it shall appear, when the line of said road is definitely fixed, that the United States have sold any sections or parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land, in alternate sections, designated as aforesaid, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached, which lands thus selected shall be held by the State of Arkansas for the use and purposes aforesaid, and for none other: *Provided*, That the land so selected and located shall in no case be further than twenty miles from the line of road when the same shall be located: *And provided further*, That all mineral lands, except those containing coal and iron, and any lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railway through the same, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

§ 3. *And be it further enacted*, That the sections and parts of sections of land which shall remain to the United States within ten miles on either side of said road, and the even sections and parts of sections corresponding to the odd ones selected within twenty miles of the same, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid: *Provided*, That actual bona fide settlers under the pre-emption laws of the United States may, after the proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the increased minimum price; *And provided, also*, That settlers under the provision of the homestead law, who comply with the terms and requirements of *this* [said] act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

§ 4. *And be it further enacted*, That the said railroads shall be, and remain, public highways, so far as the same may be constructed under this act, for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States, and at the costs in all respects of said railroad companies; and the said roads are hereby required to be constructed within the term of five years from and after the first day of July, anno Domini eighteen hundred and sixty-six.

§ 5. *And be it further enacted*, That the lands hereby granted to said States of Missouri and Arkansas shall be disposed of by said States for the purposes aforesaid only, and in manner following, namely: Whenever the governor of either of said States shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner, as a first-class railroad, and the said Secretary shall be satisfied that said State has complied in good faith with this requirement, the said Secretary of the Interior shall issue to the said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed sections of ten miles of road, and no further. And when the governor of said State shall certify to the Secretary of the Interior, and the Secretary shall be satisfied that another section of said road, ten consecutive miles in extent, connection with the preceding section or with some other first-class railroad which may be at the time in successful operation, is completed as aforesaid, the said Secretary of the Interior shall issue to the said State patents for all the lands granted and situated opposite to and within the limits of twenty miles of the line of said completed section of road or roads, and extending the length of said section, and no further, and not exceeding ten sections of land per mile for all that part of said road thus completed under the provisions of this act and the act to which this is an amendment, and so, from time to time, until said roads and branches are completed. And when the governor of said State shall so certify, and the Secretary of the Interior shall be satisfied that the whole of any one of said roads and branches is completed in a good, substantial, and workmanlike manner, as a first-class railroad, the said Secretary of the Interior shall issue to the said State patents to all the remaining lands granted for ad on account of said completed road and branches in this act, situated within the said limits of twenty miles from the line thereof, throughout the entire length of said road and branches: *Provided*, That no land shall be granted or conveyed to said States under the provisions of this act on account of the construction of any railroad or part thereof that has been constructed under the provisions of any other act at the date of the passage of this act, and adopted as a part of the line of railroad provided for in this act; *And provided*, That nothing herein contained shall interfere with any existing rights acquired under any law of Congress heretofore enacted making grants of land to the said States of Missouri and Arkansas to aid in the construction of railroads: *And provided further*, That should said States or either of them fail to complete the roads herein recited within the time prescribed by this act, then the lands undisposed of, as aforesaid, within the States so failing shall revert to the United States.

§ 6. *And be it further enacted*, That so soon as the governor of either of said States shall file or cause to be filed with the Secretary of the

Interior maps designating the routes of said roads herein mentioned, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

§ 7. *And be it further enacted*, That nothing contained in this act shall be held as vesting in the State of Arkansas title to the lands herein recited for the trust purpose aforesaid, or authorizing said State to make any disposition of the same, until said State shall be restored in all respects to its former relation to the national government and be represented in the Congress of the United States.

Publisher's Notes. Act of July 4, 1866.
See 14 Stat. 83, ch. 165.

Act of July 28, 1866.

§ 1. That the "Act granting the right of way and making a grant of land to the States of Arkansas and Missouri to aid in the construction of a railroad from a point upon the Mississippi opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River," approved February nine, eighteen hundred and fifty-three, with all the provisions therein made, be, and the same is hereby, revived and extended for the term of ten years from the passage of this act; and all the lands therein granted, which reverted to the United States under the provisions of said act, be, and the same are hereby, restored to the same custody, control, and condition, and made subject to the uses and trusts in all respects as they were before and at the time such reversion took effect: *Provided*, That all mineral lands within the limits of this grant and the grant made in section two of this act are hereby reserved to the United States: *And provided further*, That all property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge, and expense of the company or corporation owning or operating said road and branches respectively, when so required by the government of the United States.

§ 2. *And be it further enacted*, That there is hereby granted, added to, and made part of the donation of lands hereby renewed and made, subject to the same uses and trusts, and under the same custody, control, and conditions, and to be held and disposed of in the same manner as if included in the original grant, all the alternate sections and parts of sections, designated by odd numbers, lying along the outer line of lands heretofore granted, and within five miles on each side thereof, excepting lands reserved or otherwise appropriated by law, or to which the right of pre-emption or homestead settlement has attached: *Provided*, That the additional quantity of lands hereby granted, when added to the lands specified in section one hereof, shall not exceed, in the aggregate quantity of lands by this act granted, sufficient to amount to ten sections for each mile of railroad: *And provided further*, That the lands embraced in this grant and the grant revived by

section one of this act shall be disposed of only as follows: Whenever proof shall be furnished, satisfactory to the Secretary of the Interior, that any section of ten consecutive miles of said road and branches is completed in a good, substantial, and workmanlike manner as a first-class railroad, the said Secretary of the Interior shall issue patents for all the lands granted as aforesaid, not exceeding ten sections per mile situate opposite to and within the limits of twenty miles of the section of said road and branches thus completed, and when like proof shall be furnished that another section of ten miles of said road in said States or on the said branches respectively connecting with the preceding section is completed as aforesaid, the Secretary of the Interior shall issue patents in like manner as *as* in case of the first completed sections, and so on from time to time until the whole is completed as herein provided, when the Secretary of the Interior shall issue patents for all the remaining lands herein granted, not exceeding the aggregate amount provided for and located as required by sections one and two of this act: *And provided further*, That if one section of twenty miles of each of said railroads and branches shall not be fully constructed and completed as a first class railroad within three years from the time this act becomes a law, and at least one section of twenty miles on each of said roads and branches in each year thereafter, and the whole of said roads and branches within ten years from the time this act shall take effect, then and in either of said cases all the lands granted or the grant of which is revived or extended by this act, and which at the time shall be unpatented to or for the benefit of the road or company making or suffering such failure, shall revert to the United States.

§ 3. *And be it further enacted*, That all the lands mentioned in this act, and hereby granted, are hereby reserved from entry, pre-emption, or appropriation to any other purpose than herein contemplated, for the said term of ten years from the passage of this act: *Provided*, That all lands heretofore given to the State of Missouri for the construction of the Cairo and Fulton railroad, or for the use of said road lying in the State of Missouri, and all lands proposed to be granted by this act for the use or in aid of the road herein named, and lying in said State of Missouri, shall be granted and patented to the said State whenever the road shall be completed through said State, which lands may be held by said State and used toward paying the State the amount of bonds heretofore issued by it to aid said company, and all interest accrued or to accrue thereon: *Provided further*, That the provisions of this act, so far as the same relate to the Memphis and Little Rock and the Little Rock and Fort Smith branches of said road, shall not take effect until the Secretary of the Interior shall make and file a certificate in his office and the office of the Secretary of State of Arkansas, stating that the companies or corporations claiming the benefit of this act in behalf of said branches have reorganized their boards of directors in a lawful manner, and, after such reorganization, that they have respectively rescinded all acts, resolutions, or other proceedings, transferring the

lands, rights, or privileges of such corporations or companies to any convention, State, or authority recognizing or acting in concert with, or under the authority of the late so-called confederate states of America.

Publisher's Notes. Act of July 28, 1866. See 14 Stat. 338, ch. 300.

Act of 1869.

An act approved July twenty-eight, eighteen hundred and sixty-six, entitled "An act to revive and extend the provisions of 'An act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi river, opposite the mouth of the Ohio river, via Little Rock, to the Texas boundary near Fulton in Arkansas, with branches to Fort Smith and the Mississippi River,' approved February nine, eighteen hundred and fifty-three, and for other purposes," be so amended as to extend the time to the Little Rock and Fort Smith Railroad Company, for building the first section of twenty miles provided for in the second section of said act, for the term of three years from the thirteenth day of May, eighteen hundred and sixty-seven, the time of filing the certificate of organization to said company provided for in the third section of said act: Provided, That the land granted by the act hereby revived shall be sold to actual settlers only, in quantities not greater than one quarter of a section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Publisher's Notes. Act of April 10, 1869. See 16 Stat. 46, ch. 26.

Act of March 1870.

The proviso of an act entitle "An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road," approved April ten, eighteen hundred and sixty-nine, be, and the same hereby is, repealed.

Publisher's Notes. Act of March 8, 1870. See 16 Stat. 76, ch. 25.

Act of May 1870.

In case the Cairo and Fulton Railroad Company shall complete the first section of twenty miles of said road by the twentieth day of December, eighteen hundred and seventy, and the Secretary of the Interior shall be satisfied of such completion, then the said company shall be entitled to its lands in all respects and to the same extent as it would have been had said twenty miles been completed by the twenty-eighth day of April, eighteen hundred and seventy, as provided by law relating to said railroad company.

Publisher's Notes. Act of May 6, 1870.
See 16 Stat. 376, J.R. No. 53.

ADMISSION OF STATE TO REPRESENTATION IN CONGRESS (1868)

WHEREAS the people of Arkansas, in pursuance of the provisions of an act entitled "An act for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and the acts supplementary thereto, have framed and adopted a constitution of State government, which is republican, and the legislature of said State has duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Arkansas is entitled and admitted to representation in Congress as one of the States of the Union upon the following fundamental condition: That the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted, under laws equally applicable to all the inhabitants of said State: *Provided,* That any alteration of said constitution prospective in its effect may be made in regard to the time and place of residence of voters.

SCHUYLER COLFAX,

Speaker of the House of Representatives.

B. F. WADE,

President of the Senate pro tempore.

Publisher's Notes. Act of June 22,
1868. See 15 Stat. 72, ch. 69.

FEDERAL LAWS CONCERNING AUTHENTICATION

28 U.S.C. § 1733. Federal records and copies thereof.

(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

(c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.

28 U.S.C. § 1738. State and Territorial statutes and judicial proceedings; full faith and credit.

The acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory, or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory, or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

28 U.S.C. § 1739. Nonjudicial records and books.

All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.

28 U.S.C. § 1741. Foreign official documents.

An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure.

43 U.S.C. § 18. Copies of papers filed.

Whenever any person claiming to be interested in or entitled to land, under any grant or patent from the United States, applies to the

Department of the Interior for copies of papers filed and remaining therein, in anywise affecting the title to such land, it shall be the duty of the Secretary of the Interior to cause such copies to be made out and authenticated, under his hand and the seal of the Bureau of Land Management, for the person so applying.

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- Power of each house to punish for contempt, Const. Ark., Art. 5, §12.

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- Expulsion of member no bar to indictment, Const. Ark., Art. 5, §36.

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- Tax levy for city hospitals, Const. Ark., Amd. 32.

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and citizens in regard to
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